

# Conception, Birth and Paternity In Connecticut

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*A Guide to Resources in the Law Library*

*Compiled by*

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Law Libraries

**2006 Edition**

"All light is valuable on a darken path."  
DeQuincy

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These Guides are provided with  
the understanding that they represent  
just a beginning to legal research

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# Chapter 1

# Conception and Birth in Connecticut

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- “It is declared that the public policy of this state has been an adherence to the doctrine that every child born to a married woman during wedlock is legitimate.” CONN. GEN. STAT. § 45a-771(a) (2005).
- “We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.” Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S. Ct. 1110, 88 L.Ed. 1655 (1942).

# Artificial Insemination

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## **SCOPE:**

Bibliographic sources relating to artificial insemination with the semen of a donor (A.I.D.) including status of child born and the rights of the donor of the sperm in Connecticut.

## **DEFINITIONS:**

- **A. I. H.** (homologous artificial insemination) is insemination of a married woman with semen of her husband.
- **A. I. D.** (heterologous artificial insemination) is insemination of a married woman with semen of a donor other than her husband
- **Child of the marriage:** "Although the statutes have never explicitly defined the contours of the concept of a 'child of the marriage,' our cases have interpreted that concept in a consistent manner, both before and after the historic 1973 revision. A review of that case law, read in connection with certain other statutory developments, leads us to conclude that the meaning of that concept, in the context of a marital dissolution case, is limited to [includes] . . . a child born to the wife and conceived through artificial insemination by a donor pursuant to §§ 45a-771 through 45a-779." Doe v. Doe, 244 Conn. 403, 435, 710 A.2d 1297 (1998)
- **ARTs** = Assisted Reproductive Technology

## **STATUTES:**

- CONN. GEN. STAT. (2005)
  - Chapter 802a. Wills: execution and construction
    - § 45a-257b. Failure of testator to provide for children born or adopted after execution of will. Determination of share of estate.
  - Chapter 803a Children Conceived Through Artificial Insemination
    - § 45a-771. Child born as a result of artificial insemination legitimate
    - § 45a-772. A.I.D. Who may perform. Consent required
    - § 45a-773. Request and consent to be filed in Probate Court. Confidentiality
    - § 45a-774. Status of child born as result of A.I.D.
    - § 45a-775. No rights in donor of sperm
    - § 45a-776. Status of child determined by jurisdiction of birth
    - § 45a-777. Inheritance by child conceived as a result of A.I.D.
    - § 45a-778. Words of inheritance to apply to child conceived through A.I.D.
    - § 45a-779. Status of child conceived through A.I.D., born prior to October 1, 1975

## **LEGISLATION REPORTS:**

- "Insurance coverage for infertility treatment," by Janet L. Kaminski. Connecticut General Assembly. Office of Legislative Research Report 2005-R-0236 (March 1, 2005). "You asked for infertility treatment coverage requirements in those states [including Connecticut] that mandate coverage."
- "Uniform status of children of assisted conception law and Connecticut Law," by Lawrence K. Furbish. Connecticut General Assembly. Office of

Legislative Research Report 99-R-0982 (October 1, 1999).

<http://www.cga.state.ct.us/ps99/rpt/olr/htm/99-r-0982.htm>

“ . . . the only comparable provisions in Connecticut are our artificial insemination statutes (CGS § 54a-771 through 779). But these are more restrictive than the model law. Our statute covers children conceived through the use of ‘heterologous artificial insemination,’ which is artificial insemination with semen from a man who is not the woman's husband. Our law establishes how children born through the use of this procedure are to be deemed legitimate and the process that must be followed by the parents, physician, and probate court.”

- “Custody, surrogate birth, and artificial insemination,” by Lawrence K. Furbish. Connecticut General Assembly. Office of Legislative Research Report 98-R-0032 (February 3, 1998).
- “Artificial insemination and inheritance,” by Jerome Harleston. Connecticut General Assembly. Office of Legislative Research Report 1995-R-1099 (October 2, 1995).
- 1975 Conn. Acts 233 (Reg. Sess.). (Substitute H.B. 5147). An act concerning the status of children conceived through artificial insemination.

#### **FORMS:**

- 13B AMERICAN JURISPRUDENCE LEGAL FORMS 2d (2002).  
Chapter 191. Parent and child
  - § 191:101. Agreement for artificial insemination—Between husband, wife, and donor—Identity of donor known
  - § 191:102. Agreement for artificial insemination—Between recipient and donor—Identity of donor known
  - § 191:103. Agreement for artificial insemination—By recipient and physician—Identity of donor unknown
  - § 191:104. Agreement for artificial insemination—By donor and physician or intermediary—Identity of recipient unknown
- HANDLING PREGNANCY & BIRTH CASES (1983)
  - § 4.4. Artificial Insemination Consent Form
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005)
  - § 63.09[2][a]. FORM: Consent of Husband to Artificial Insemination of Wife

#### **CASES:**

- Laspina-Williams v. Laspina-Williams, 46 Conn. Supp. 165, 742 A.2d 840 (1999). [“Separation of parties in same sex relationship constituted disruption of family unit and conferred standing upon plaintiff noncustodial parent to petition for visitation rights with minor child conceived through artificial insemination who had been jointly raised by coguardian same sex partners.” *Annotation to CGS § 46b-59* ] *See* Table 1.
- W. v. W., 248 Conn. 487, 494, 728 A.2d 1076 (1999). “This court held that, although § 46b-56 no longer includes the phrase ‘child of the marriage,’ the concept ‘remains implicit in our entire statutory scheme governing marital dissolutions and retains viability by continuing to define who is a parent. . . .’ *Doe v. Doe*, supra, [ 244 Conn. [403,]422 [710 A.2d 1297 (1998)]]. The court continued: ‘[T]he meaning of [the concept of a ‘child of the marriage’], in the context of a marital dissolution case, is limited to a child conceived by both parties, a child adopted by both parties, a child born to the wife and adopted by the husband, a child conceived by the husband and adopted by the wife, and a child born to the wife and conceived through artificial insemination by a donor pursuant to [General Statutes] §§ 45a-771 through 45a-779.” *Id.*, 435.”
- In re Simon A. W., 1997 Ct. Sup. 5125, 5127-28 (Jud. District, New Haven, No. NO5-CP97-009105-A, May 27, 1997) 1997 WL 309576. “The

provisions of Chapter 803a (Sec. 45a-771 through 779) entitled 'Children Conceived Through Artificial Insemination' shed no light on this case since, despite its title, they relate exclusively to children conceived by married women through artificial insemination by anonymous donors."

- Doe v. Doe, 244 Conn. 403, 419, 710 A.2d 1297 (1998).

#### **ENCYCLOPEDIAS:**

- 59 AM. JUR. 2d *Parent and Child* (2002).
  - § 3. Definitions—"Surrogate mother"
  - § 5. Definitions—"Child artificially inseminated"
  - § 6. Definitions—"Family"
  - § 36. Right of visitation
  - § 56. Obligations of respective parents—Father of child artificially conceived
- Robin Cheryl Miller, Annotation, *Child Custody And Visitation Rights Arising From Same-Sex Relationship*, 80 ALR5th 1 (2000).
- Ardis L. Campbell, Annotation, *Determination Of Status As Legal Or Natural Parents In Contested Surrogacy Births*, 77 ALR5th 567 (2000).
- Michael J. Yaworsky, Annotation, *Rights And Obligations Resulting From Human Artificial Insemination*, 83 ALR4th 295 (1991).
- Edward L. Raymond, Jr., Annotation, *Coverage Of Artificial Insemination Procedures Or Other Infertility Treatments By Health, Sickness, Or Hospitalization Insurance*, 80 ALR4th 1059 (1990).
- *Sperm Bank Liability For Donor Semen Transmitting AIDS*, 25 AM JUR POF3d 1 (1994).
- *Liability Of Sperm Banks*, 50 AM JUR TRIALS 1 (1994).

#### **TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  - Chapter 42. Child custody and visitation
    - § 42.11. Custody claims by third party
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 64-A. Law of alternative reproductive technologies
    - § 64A.04. Legal issues involved in artificial insemination
      - [1] Introduction
      - [2] Who may perform artificial insemination
      - [3] Donor and recipient
      - [4] Parentage where artificial insemination is by the husband
      - [5] Legal issues involved in artificial insemination by non-husband sperm donor
        - [d] Compensation to donors
      - [6] Practical checklist
      - [7] Checklist
- 1 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW & PRACTICE (2005).
  - Chapter 1. An overview of recent developments in the law of child custody
    - § 102. The changing definition of "parent:" assisted procreation
      - [2] Types of assisted procreation
        - [b] Artificial insemination
      - [3] Assisted procreation and the Constitution
      - [4] Preconception intentions versus genetic links
      - [5] State parentage laws and assisted procreation
        - [a] Generally
        - [b] Paternal rights

- [i] Presumption of legitimacy
  - [ii] Artificial insemination
  - [c] Maternal rights
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW & PRACTICE (2005).
  - Chapter 11A. Assisted reproductive technologies
    - § 11A.01. Clarification of terminology used in ART's and collaborative reproduction
    - § 11A-02. Medical aspects of ART: What is ART?
    - § 11A-03. Parentage issues in ARTs
    - § 11A-04. Compare adoption: Why ARTs demands a different approach
    - § 11A-05. Statutory overview of collaborative reproduction
    - § 11A-06. Case law on ARTs
    - § 11A-07. Agreements on embryo preservation or other disposition
    - § 11A-08. Preparing collaborative reproduction agreements
    - § 11A-09. Conclusion
- 2 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2004).
  - Chapter 17. Assisted reproduction: Constitutional and family law parameters by Ami S. Jaeger
    - § 17.01. Keep your focus on the child
    - § 17.02. Assisted reproduction and collaborative reproduction
    - § 17.03. Directives and agreements
    - § 17.04. Adoptions for children; Donations for embryos
    - § 17.05. Checklist for counseling ART clients
    - § 17.06. Assisted reproduction case law
- 3 JOAN HEIFETZ HOLLINGER ET AL., ADOPTION LAW AND PRACTICE (2004).
  - Chapter 14. Assisted reproductive technologies, collaborative reproduction, and adoption
    - § 14.05. Statutory overview of collaborative reproduction
    - § 14.06. Case law on ARTs
    - § 14.08. Preparing collaborative reproduction agreements
    - § 14.20. Charts summarizing state statutes on ARTs
    - [2]. Artificial insemination
- HANDLING PREGNANCY & BIRTH CASES (1983).
  - Chapter 4 "Conception Stage."
    - § 4.1 Definition; Overview
    - § 4.3 Spousal consent
    - § 4.5 Husband's rights and obligations
    - § 4.8 Unmarried female rights and obligations
    - § 4.16 Malpractice
- SAMUEL GREEN AND JOHN V. LONG, MARRIAGE AND FAMILY LAW AGREEMENTS (1984).
  - Chapter 5. Birth, parenthood and adoption
    - § 5.02. Introduction to artificial insemination
    - § 5.03. Artificial insemination and adultery
    - § 5.04. Status and support rights of the child
    - § 5.05. The consent form
    - § 5.06. —Ramifications of consent
    - § 5.07. Artificial insemination and the unmarried woman
    - § 5.08. Confidentiality of the parties

**INDICES TOPICS:**

- ALR Index: *Artificial Insemination*



**LAW REVIEWS:**

- Anne LeVasseur, Note, *Virtual Visitation: How Will Courts Respond To A New And Emerging Issue?* 17 CONNECTICUT PROBATE LAW JOURNAL 362 (2004).
- Annette Ruth, Article, *Virtual Mothers And The Meaning Of Parenthood*, 34 U. MICH. J.L. REFORM 683 (2001).
- Ruthann Robson, Article, *Making Mothers: Lesbian Legal Theory & Judicial Construction of Lesbian Mothers*, 22 WOMEN'S RIGHTS L. REP. 15 (2000).
- Daryl Gordon-Ceresky, Note, *Artificial Insemination: Its Effect on Paternity and Inheritance Rights*, 9 CONNECTICUT PROBATE LAW JOURNAL 245 (Spring, 1995).
- Greenberg & Hirsh, *Surrogate Motherhood and Artificial Insemination: Contractual Implications*, 29 MEDICAL TRIAL TECHNIQUE QUARTERLY 149 (1982).

**BIBLIOGRAPHIES:**

- E. Pratt , *A Pathfinder On Artificial Insemination*,” 8 LEGAL REFERENCE SERVICES QUARTERLY 117 (Spring-Summer 1988).

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**Table 1 Child Visitation**

<p style="text-align: center;"><b>Child Visitation</b>  <b>Laspina-Williams v. Laspina-Williams</b></p>	
<p><u>Breton v. Stamps</u>, No. FA 0073423 S (Ct. Super. J.D. Tolland at Rockville, Jan. 29, 2001), 2001 WL 400381, 2001 Conn. Super. LEXIS 926.</p>	<p>“Several Superior Court decisions have held that a plaintiff who is not related to the minor child has standing under General Statute § 46b-59 when the facts demonstrate a close relationship between the plaintiff and the minor child and a significant disruption of the family unit. See <i>Laspina-Williams v. Laspina-Williams</i>, 46 Conn. Sup. 165, 742 A.2d 840 (1999); <i>Antonucci v. Cameron</i>, Superior Court, judicial district of New Haven at New Haven, Docket No. 042047 (March 3, 1999, Axelrod, J.) (24 Conn. L. Rptr. 237); <i>Matthews v. Thomasen</i>, Superior Court, judicial district of Hartford-New Britain at New Britain, Docket No. 478796(August 7, 1997, Keller, J.) (20 Conn. L. Rptr. 357); <i>Paraskevas v. Tunick</i>, Superior Court, judicial district of Litchfield, Docket No. 072398 (April 23, 1997, Dranginis, J.) (19 Conn. L. Rptr. 39).”</p>
<p><i>Laspina-Williams v. Laspina-Williams</i>, 46 Conn. Sup. 165, 742 A.2d 840 (1999)</p>	<p>“Under § <u>46b-59</u> ‘any person’ may seek visitation of a minor child as opposed to only persons with a biological tie to the child. Furthermore, our Supreme Court in <i>Castagno v. Wholean</i>, supra, 239 Conn. 352 concluded ‘that the legislature intended § <u>46b-59</u> to afford the trial court jurisdiction to entertain a petition for visitation only when the minor child’s family life has been disrupted in a manner analogous to the situations addressed by [General Statutes] §§ <u>46b-56</u> and <u>46b-57</u> . . . .’”</p>
<p><i>Ibid.</i> , p. 170</p>	<p>“In dicta, the Supreme Court recognized that “current sociocultural definitions of ‘family’ are so fluid as to create myriad factual circumstances to which [the] statute. . . may apply . . . .” <i>Id.</i>, 352 n. 15. The Supreme Court has “also recognized that, for purposes of third party custody and visitation determinations, [t]raditional models of the nuclear family have come, in recent years, to be replaced by various configurations of parents, stepparents, adoptive parents and grandparents, and we should not assume that the welfare of children is best served by a narrow definition of those whom we permit to continue to manifest their deep concern for a child’s growth and development. <i>Michaud v. Wawruck</i>, [209 Conn. 407] 415[, 551 A.2d 738 (1998)].” (Internal quotation marks omitted.) <i>Doe v. Doe</i>, 244 Conn. 403, 442, 710 A.2d 1297 (1998).” <i>Ibid.</i></p>

# Section 1.2

## In Vitro Fertilization

### A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to in vitro fertilization including coverage by health insurance.
- DEFINITION:**
- **In vitro** (latin for “in glass”) is the process by which an ovum(egg) is removed from a woman’s ovary and fertilized in a laboratory vessel with sperm of husband or donor.”
- CASES:**
- In Re Baby M, 542 A.2d 52 (N.J. Super. Ch. 1988)
  - In the Matter of the Adoption of T.N.F., 781 P.2d 973 (Alaska 1989).
- LEGISLATIVE:**
- “In vitro fertilization,” by Jerome Harleston. Connecticut General Assembly, Office of Legislative Research Report 98-R-0847 (June 26, 1998).
- ENCYCLOPEDIAS:**
- Elizabeth A. Trainor, Annotation, *Right Of Husband, Wife, Or Other Party To Custody Of Frozen Embryo, Pre-Embryo, Or Pre-Zygote In Event Of Divorce, Death, Or Other Circumstances*, 87 ALR5th 253 (2001).
- TEXTS & TREATISES:**
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).  
Chapter 64-A. The Law of Alternative Reproductive Technologies  
§ 64A.05 Legal issues involved in *In Vitro* fertilization
    - [1] Introduction
    - [2] Parentage issues involved in *In Vitro* fertilization
    - [3] Other issues in *In Vitro* fertilization
    - [4] Practical comment
    - [5] Checklist
  - 1 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW & PRACTICE (2005).  
§ 1.02. The changing definition of “parent” assisted procreation
    - [2]. Types of assisted procreation
      - [d]. *In Vitro* fertilization
      - [e]. *In Vitro* fertilization with donor sperm
      - [f]. *In Vitro* fertilization with donated eggs
    - [3]. Assisted procreation and the constitution
  - 2 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2004).  
Chapter 17. Assisted reproduction: Constitutional and family law parameters
  - 3 JOAN HEIFETZ HOLLINGER ET AL., ADOPTION LAW AND PRACTICE (2004).  
Chapter 14. Assisted reproductive technologies, collaborative reproduction, and adoption
    - § 14.05. Statutory overview of collaborative reproduction
    - § 14.06. Case law on ARTs

- [2]. Disputes over preserved embryos
- § 14.07. Agreements on embryo preservation or other disposition
  - [1]. Need for agreement
  - [2]. Essential provisions of agreement
- § 14.08. Preparing collaborative reproduction agreements
- § 14.20. Charts summarizing state statutes on ARTs
  - [3]. Egg donation
- HANDLING PREGNANCY & BIRTH CASES (1983).
  - Chapter 4 Conception Stage.
    - II. In vitro fertilization
      - § 4.22 Constitutional considerations
      - § 4.23 Tort action for destruction of in vitro fertilization conceptus

**LAW REVIEWS:**

- Daryl Gordon-Ceresky, Note, *Artificial Insemination: Its Effect on Paternity and Inheritance Rights*, 9 CONNECTICUT PROBATE LAW JOURNAL 245 (Spring, 1995).
- Jennifer Marigliano Dehmel, Note, *To Have Or Not To Have: Whose Procreative Rights Prevail In Disputes Over Disposition Of Frozen Embryos*, 27 CONN. L. REV. 1377 (1994-95).
- Tanya Feliciano, Note, *Davis v. Davis: What About Future Disputes*, 26 CONN. L. REV. 305 (1993).

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# Section 1.3

## Surrogate Motherhood

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A Guide to Resources in the Law Library

### **SCOPE:**

Bibliographic resources relating to surrogate motherhood in Connecticut including payments to surrogate and contents of agreement

### **DEFINITION:**

- “For a fee of \$10,000, a woman agrees to be artificially inseminated with the semen of another woman’s husband; she is to conceive the a child, carry it to term, and after its birth surrender it to the natural father and his wife. The intent of the contract is that the child’s natural mother will thereafter be forever separated from her child. The wife is to adopt the child, and she and the natural father are to be regarded as its parents for all purposes.” Matter of Baby M., 537 A.2d 1227, 1234 (N.J., 1988).
- **Equitable parent doctrine:** “rejected by this court, in which a court ‘allow[s] a nonparent to seek custody under the same criteria as would be applied to a biological or adoptive parent.’ Doe v. Doe, supra, 244 Conn. [403,]479 (Katz, J., concurring and dissenting).” W. v. W., 248 Conn. 487, 507 fn9, 728 A.2d 1076 (1999).

### **LEGISLATIVE:**

- Committee Bill No. 5966 (1999). An act concerning surrogate mothers, adoption and guardians of minors. [Not passed].
- "Uniform status of children of assisted conception law and Connecticut Law," by Lawrence K. Furbish. Connecticut General Assembly. Office of Legislative Research Report 99-R-0982 (October 1, 1999).

“Connecticut has not adopted either version of the model act; as you may remember, the model law gives states two options depending on whether or not they wish to allow surrogate parent contracts. Connecticut has no law regarding surrogate parent contracts so we have nothing comparable to these provisions. (We have enclosed for your information a copy of a recent report on surrogacy, 99-R-0857).”
- “Surrogate parent contracts in Connecticut and other state,” by Lawrence K. Furbish. Connecticut General Assembly. Office of Legislative Research Report 99-R-0857 ( September 3, 1999).

“Connecticut does not either explicitly authorize or prohibit surrogate parenting contracts. Accordingly, people are free to enter into such contracts. As long as both sides live up to the contract there would be no problem.”
- “Doe v. Doe, supreme court decision,” by Lawrence K. Furbish. Connecticut General Assembly. Office of Legislative Research Report 98-R-0550 (May 1, 1998).
- “Custody, surrogate birth, and artificial insemination,” by Lawrence K. Furbish. Connecticut General Assembly. Office of Legislative Research Report 98-R-0032 (February 3, 1998).

- “Surrogate parenting, sale of babies, and permissive adoption,” by Lawrence K. Furbish. Connecticut General Assembly. Office of Legislative Research Report 96-R-01215 (September 16, 1996).  
<http://www.cga.state.ct.us/ps96/rpt/olr/96-r-1215.doc>  
“Connecticut has no law prohibiting, authorizing, or regulating surrogate parenting. People entering or carrying out a surrogate contract would apparently not be violating any law, and a surrogacy arrangement would become legal issue only if the parties had a disagreement and took it to court.”
- “Children conceived by artificial insemination and carried by a surrogate mother.” Connecticut General Assembly. Office of Legislative Research Report 98-R-0477 (March 26, 1998).  
<http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0477.doc>  
*Whether parents initiating the process could be listed on the child’s birth certificate without taking any other legal action.*

#### **FORMS:**

- 13C AMERICAN JURISPRUDENCE LEGAL FORMS (2002).  
Chapter 191. Parent and child  
§ 191:97. Surrogate parenting agreement  
§ 191:98. Agreement to select surrogate mother
- 6D NICOLS CYCLOPEDIA OF LEGAL FORMS (1992).  
Surrogate parenting transactions §§ 6.7377 - 6.7396  
§ 6.7378 Surrogate parenting agreement  
§ 6.7389 Surrogate application form

#### **CASES:**

- Doe v. Roe, 246 Conn. 652, 653, 717 A.2d 706 (1998). “The narrow question presented by this appeal is whether the Superior Court has subject matter jurisdiction to render judgment in accordance with an agreement that includes a promise by a surrogate mother to consent to the termination of her parental rights in Probate Court.”
- Doe v. Doe, 244 Conn. 403, 405, 710 A.2d 1297 (1998). “This dissolution of marriage case involves a custody dispute concerning a minor child who was conceived by artificial insemination between the defendant husband and a surrogate mother (surrogate) whose parental rights and whose then husband’s parental rights, if any, have now been terminated.”
- In Matter of Baby M, 537 A.2d 1227, 109 N.J. 396, 77 ALR4th 1 (1988).

#### **ENCYCLOPEDIAS:**

- Ardis L. Campbell, Annotation, *Determination Of Status As Legal Or Natural Parents In Contested Surrogacy Births*, 77 ALR5th 567 (2000).
- Danny R. Veilleux, Annotation, *Validity and Construction of Surrogate Parenting Agreement*, 77 ALR4th 70 (1990).
- Michael J. Yaworsky, Annotation, *Rights And Obligations Resulting From Human Artificial Insemination*, 83 ALR4th 295 (1991).

#### **TEXTS & TREATISES:**

- 1 JOAN H. HOLLINGER ET AL., ADOPTION LAW AND PRACTICE (2003).  
Chapter 2. Consent to adoption
- 3 JOAN H. HOLLINGER ET AL., ADOPTION LAW AND PRACTICE (2004).  
Chapter 14. Assisted reproductive technologies, collaborative reproduction and adoption  
§ 14.05. Statutory overview of collaborative reproduction  
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§ 14.07. Agreements on embryo preservation  
§ 14.08. Preparing collaborative reproduction agreements  
§ 14.20. Charts summarizing state statutes on ART  
[1] Surrogacy and gestational carriers

- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW & PRACTICE (2004).
  - Chapter 11A. Assisted reproductive technologies and collaborative reproduction
    - § 11A.05. Statutory overview of collaborative reproduction
    - § 11A.06. Case law on ARTs
    - § 11A.08. Preparing collaborative reproduction agreements
      - [1] Introduction
      - [2] Requirement of medical screening
      - [3] Requirement of psychological evaluation
      - [4] Compensation
      - [5] Relinquishment of parental rights
      - [6] Personal protection of donor or carrier
      - [7] Nature of parties' relationship
      - [8] Summary of elements for gestational carrier agreements
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 64-A. Law of Alternative Reproduction Technologies
    - § 64A.02. Types of alternative reproductive technologies
      - [5] Surrogate parenting
    - § 64A.07 Legal issues in surrogate parenting.
      - [1] Introduction
      - [2] Parentage issues in surrogate parenting
      - [3] Fees for surrogacy
      - [4] Selecting the surrogate
      - [5] Practical comment
      - [6] Checklist
    - § 64A.08 Proposed statutory provisions for alternative reproductive technologies
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY CASES (1983).
  - Chapter 9. Assisted conception and surrogacy
    - § 9.13. Surrogacy generally
    - § 9.14. Gratuitous surrogacy
    - § 9.15. Surrogacy for a fee
    - § 9.16. Rights of surrogate
    - § 9.17. Status of the surrogate's husband
    - § 9.18. Enforceability and remedies
- 2 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2004).
  - Chapter 17. Assisted reproduction: Constitutional and family law parameters
    - § 17.02. Assisted reproduction and collaborative reproduction
    - § 17.03. Directives and agreements
    - § 17.05. Checklist for counseling ART clients
    - § 17.06. Assisted reproduction case law
    - § 17.10. Gestational carriers and surrogates: Why the distinction is significant
  - Appendix 17B. State laws on assisted reproduction
    - § 17B.01. State laws re: Surrogacy and gestational carriers
- HANDLING PREGNANCY & BIRTH CASES (1983)
  - Chapter 4. Conception stage
    - Surrogate motherhood
      - § 4.25. Definition and background
      - § 4.26. Ethical considerations
      - § 4.27. Constitutional considerations
      - § 4.28. Contract considerations

- § 4.29. Policy and statutory considerations
- § 4.30. Sample legislation. Form for proposed legislation
- § 4.31. Explanation of proposed legislation
- § 4.32. Sample contract form
- SAMUEL GREEN AND JOHN V. LONG, MARRIAGE AND FAMILY LAW AGREEMENTS (1984).
  - Chapter 5. Birth, parenthood and adoption
    - § 5.09. Introduction to surrogate motherhood
    - § 5.10. Presumption of legitimacy
    - § 5.11. Statutory impediments to surrogate motherhood
    - § 5.12. —Baby brokerage statutes
    - § 5.13. Surrogate motherhood as a constitutional right
    - § 5.14. Drafting surrogate motherhood contract
    - § 5.15. Issues to be considered before executing the surrogate motherhood contract
    - § 5.16. Compensating the surrogate mother
    - § 5.17. Enforcing the surrogate motherhood contract

#### **LAW REVIEWS:**

##### **CONNECTICUT**

- Donald D. Mooreland, Note, *Reproductive Technology Outpacing Connecticut Lawmakers*, 14 QUINNIPIAC PROBATE LAW JOURNAL (1999).
- Samuel V. Schoonmaker, III, *Surrogate Parenting: Connecticut's Efforts to Regulate Surrogate Motherhood*, 6 CONNECTICUT FAMILY LAW JOURNAL 1, (January 1988).
- Joseph B White, *Surrogate Parenting Bill Introduced*, 13 CONNECTICUT LAW TRIBUNE no. 14 (April 6, 1987).

##### **OTHER**

- George P. Smith, *Razor's Edge Of Human Bonding: Artificial Fathers And Surrogate Mothers*, 5 WESTERN NEW ENGLAND LAW REVIEW 639 (Spring 1983).
- Greenberg & Hirsh, *Surrogate Motherhood and Artificial Insemination: Contractual Implications*, 29 MEDICAL TRIAL TECHNIQUE QUARTERLY 149 (1982).
- Martha A. Field, *Surrogate Motherhood: The Legal and Human Issues*, 102 HARVARD LAW REVIEW 1074 (March 1989).
- Deborah Kay Walther 'Ownership' of the Fertilized Ovum In Vitro, 26 FAMILY LAW QUARTERLY, no. 3 (Fall 1992), p. 235. [available at Norwich Law Library]
- Anne Goodwin, *Determination of Legal Parentage in Egg Donation, Embryo transplantation, and Gestational Surrogacy Arrangements*, 26 FAMILY LAW QUARTERLY 275 (Fall 1992) [available at Norwich Law Library]
- Herbert T. Krimmel, *Can Surrogate Parenting be Stopped? An Inspection of the Constitutional and Pragmatic Aspects of Outlawing Surrogate Mother Arrangements*, 27 VALPARAISO UNIVERSITY LAW REVIEW 1 (Fall 1992).

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# Wrongful Birth or Life

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the tort of wrongful birth or life in Connecticut.

## **DEFINITION:**

- “The terms ‘**wrongful birth**’ and ‘**wrongful life**’ are but shorthand phrases that describe the causes of action of parents and children when negligent medical treatment deprives parents of the option to terminate a pregnancy to avoid the birth of a defective child.” Procanik by Procanik v. Cillo, 478 A2d 755, 760 (N.J. 1984).
- ‘**wrongful life**’ refers to a cause of action brought by or on behalf of a defective child who claims that but for the defendant doctor’s negligent advice to or treatment of its parents, the child would not have been born. “*Ibid.*”

## **FORMS:**

- HANDLING PREGNANCY & BIRTH CASES (1983).  
§ 6.12. Sample complaint.
- *Cause of action for wrongful birth or wrongful life*, 7 COA 589 (1985).  
§ 25. Sample complaint. Wrongful birth action

## **CASES:**

- Burns v. Hanson, 249 Conn. 809, 811, 734 A.2d 964 (1999). “The issues in this action for malpractice arise out of the birth of a healthy child to a severely disabled mother, who, in accordance with medical advice, had decided not to have another child.”
- Martinez v. Hartford Hospital, 4 Conn. L. Repr. 57, 60 (1991). “In the instant case, plaintiff has alleged sufficient facts to support a cause of action for medical malpractice. Further, damages arising from defendant’s negligence relating to the birth of the twins and the costs of raising them are properly pleaded and recoverable.”
- Ochs v. Borrelli, 187 Conn. 253, 258, 445 A.2d 883 (1982). “In our view, the better rule is to allow parents to recover for the expenses of rearing an unplanned child to majority when the child’s birth results from negligent medical care.”

## **WEST KEY NUMBERS:**

- *Physicians and Surgeons* # 18.110

## **ENCYCLOPEDIAS:**

- Anne M. Payne, Annotation, *Sexual Partner’s Tort Liability To Other Partner For Fraudulent Misrepresentation Regarding Sterility Or Use Of Birth Control Resulting In Pregnancy*, 2 ALR5th 301 (1992).
- Anne M. Payne, Annotation, *Parent’s Child Support Liability As Affected By Other Parent’s Fraudulent Misrepresentation Regarding Sterility Or Use Of Birth Control, Or Refusal To Abort Pregnancy*, 2 ALR5th 337 (1992).
- Russell G. Donaldson, Annotation, *Recoverability Of Cost Of Raising*

*Normal, Health Child Born As Result Of Physician's Negligence Or Breach Of Contract Or Warranty*, 89 ALR4th 632 (1991).

- Gregory G. Sarno, Annotation, *Recoverability Of Compensatory Damages For Mental Anguish Or Emotional Distress For Tortiously Causing Another Birth*, 74 ALR4th 798 (1989).
- *Cause of action for wrongful birth or wrongful life*, 7 COA 589 (1985).
- *Cause of action against physician for wrongful conception or wrongful pregnancy*, 3 COA 83 (1984).

**TEXTS & TREATISES:**

- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, *TORT REMEDIES IN CONNECTICUT* (1996).
  - Chapter 9: "Wrongful pregnancy, birth and life"
    - § 9-4 Wrongful birth
- HANDLING PREGNANCY & BIRTH CASES (1983).
  - Chapter 6. Prenatal Stage: Emerging Theories of Liability
    - §§ 6.4 to 6.6 Elements of cause of action
    - §§ 6.7 to 6.11 Damages
- 2 NINA M. VITEK, *DISPUTED PATERNITY PROCEEDINGS* (2004).
  - Chapter 29. Challenging the obligation to pay child-rearing costs
    - Liability of third parties affecting the support obligations
      - § 29.10. Negligence as basis for "Wrongful Conception" claim
      - § 29.11. Events which may create a 'wrongful conception' claim
      - § 29.12. Theory and validity of "wrongful conception" cause of action
      - § 29.13. Other theories of liability
      - § 29.14. Recoveries available
      - § 29.15. Rationales for the denial of child-rearing costs
      - § 29.16. Rationales for the recovery of child-rearing costs
      - § 29.17. Constitutional dimension of the issue: privacy and procreation choice
      - § 29.18. Author's strategies

**LAW REVIEWS:**

- Garrett M. Moore, *Life As An Injury: There Is A Debate Going On Over Whether Actions Known As 'Wrongful Conception' And 'Wrongful Life' Are Valid Causes Of Action*, 23 CONNECTICUT LAW TRIBUNE no. 47, p. 15 (November 24, 1997).

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**Table 2 Abortion law in Connecticut**

<h2 style="text-align: center;">Abortion Law in Connecticut</h2>	
Statutes	<p>CONN. GEN. STAT. (2005)  Chapter 368y Abortion  §19a-600. Definitions  §19a-601. Information and counseling for minors required. Medical emergency exception.  §19a-602. Termination of pregnancy prior to viability. Abortion after viability prohibited; exception.</p>
History of legislation	<p>1990 Conn. Acts 113 (Reg. Sess.). "An act concerning the repeal of certain statutes"  Repealed: CONN. GEN. STAT. (1999) §§53-29, -30, -31, -31a, -31b</p>
Legislative Reports	<ul style="list-style-type: none"> <li>• "Abortion clinics in Connecticut," by Elizabeth H. Pytko, . Connecticut General Assembly. Office of Legislative Research Report no. 2005-R-0109 (February 3, 2005).</li> <li>• "Abortions for minors: Other states' parental involvement laws," by Susan Price-Livingston. . Connecticut General Assembly. Office of Legislative Research Report no. 2003-R-0050 (February 3, 2003).</li> <li>• "Abortions performed to preserve the life or health of the mother," by Sandra N. Bragg. Connecticut General Assembly. Office of Legislative Research Report no. 2000-R-0069 (January 27, 2000).  <a href="http://www.cga.state.ct.us/2000/rpt/olr/2000-r-0069.doc">http://www.cga.state.ct.us/2000/rpt/olr/2000-r-0069.doc</a>  ". . . the number of abortions performed to preserve the life or health of a mother in the state of Connecticut . . . whether there are federal and state guidelines or regulations that define 'preserving the life or health of a mother'".</li> <li>• "CONCEPTION, BIRTH," by John Kasprak. Connecticut General Assembly. Office of Legislative Research Report no. 99-R-0263. (February 10, 1999).  <a href="http://www.cga.state.ct.us/ps99/rpt/olr/99%2Dr%2D0263.doc">http://www.cga.state.ct.us/ps99/rpt/olr/99%2Dr%2D0263.doc</a>  Connecticut's law on "post-viability" abortion</li> <li>• "Abortion Laws," by John Kasprak. Connecticut General Assembly. Office of Legislative Research Report no. 98-R-1132 (September 21, 1998).  <a href="http://www.cga.state.ct.us/ps98/rpt/olr/98%2Dr%2D1132.doc">http://www.cga.state.ct.us/ps98/rpt/olr/98%2Dr%2D1132.doc</a>  Comparison of Connecticut's abortion law with those of other states, particularly in regard to restrictions placed on abortions after the first trimester.  "Connecticut is one of four states that have enacted declarations affirmatively protecting a woman's right to choose an abortion."</li> </ul>
Cases	<ul style="list-style-type: none"> <li>• <u>State v. Clarke</u>, 24 Conn. App. 541 (1991). <i>Demonstration at an abortion clinic</i>.</li> </ul>
Texts & Treatises	<p>SAMUEL GREEN AND JOHN V. LONG, MARRIAGE AND FAMILY LAW AGREEMENTS (1984). Chapter 5. Birth, parenthood and adoption. §§ 5.18-5.21.</p>
Law Reviews	<p>David B. Kopel and Glenn H. Reynolds, <i>Taking Federalism Seriously: Lopez And The Partial Birth Abortion Ban Act</i>, 30 CONNECTICUT LAW REVIEW 30 (Fall 1997).</p>

# Appendix 1A

## ABORTION

**Abortion Laws**  
The Connecticut General Assembly  
Office of Legislative Research  
Report 98-R-1132

A comparison of Connecticut's abortion law with those of other states, particularly in regard to restrictions placed on abortions after the first trimester

September 21, 1998

FROM:

You asked for a comparison of Connecticut's abortion law with those of other states, particularly in regard to restrictions placed on abortions after the first trimester.

### **SUMMARY**

Connecticut is one of four states that have enacted declarations affirmatively protecting a woman's right to choose an abortion. Twenty-two states have passed laws prohibiting the use of certain abortion procedures. These are known as "partial birth abortion" laws. Such laws are the subject of court challenges in a number of these states. Connecticut does not have such a law.

Nineteen states have mandatory waiting periods prohibiting a woman from obtaining an abortion until a certain time period passes. Connecticut does not have this.

Thirty states, including Connecticut, have laws generally requiring that women receive state-mandated information and materials concerning fetal development, prenatal care, and other related information.

Thirty-nine states prohibit minors from obtaining abortions without parental consent or notice. While Connecticut does not have such a law, it does require a minor to receive counseling, before getting an

abortion, that includes discussion of the possibility of consulting her parents.

Four states have laws requiring physicians to perform tests to determine viability in certain circumstances. Connecticut does not.

Finally, forty states, Connecticut among them, specifically prohibit abortion after viability under specified circumstances.

## **COMPARISON OF CONNECTICUT'S ABORTION LAW WITH OTHER STATES**

### ***Legislative Declaration***

Four states, including Connecticut, have legislative declarations affirmatively protecting a woman's right to choose abortion. The others are Maine, Maryland, and Washington.

Connecticut law provides that "the decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the pregnant woman in consultation with her physician" (CGS § 19a-602(a), (b)).

Maine's law states, "it is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability" (Title 22, § 1598(1)). Maryland law provides that the state may not interfere with the decision of a woman to terminate a pregnancy: (1) before the fetus is viable or (2) at any time, if an abortion is necessary to protect the life or health of the woman, or the fetus is affected by genetic defect or serious deformity or abnormality (Health-General, § 20-209).

Washington law declares, "every woman has the fundamental right to choose or refuse to have an abortion...The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health" (§ 9.02.100).

Another state, Nevada, has a law that affirmatively protects a woman's right to obtain an abortion during the first 24 weeks of pregnancy (§ 442.250). In November 1990, Nevada voters passed a ballot initiative approving this law; as a result, it cannot be amended, repealed, or otherwise changed without a referendum vote.

### ***Partial Birth Abortion***

Twenty-two states have enacted partial birth abortion bans. (Connecticut is not one of them.) The laws in seven of these states are in effect, the laws in two of them have been enacted but are not yet in effect, and in three states, the laws are in effect to a limited degree. Federal or state courts have blocked the enforcement of ten of these laws. (OLR Report 98-R-0506 provides more information on this issue and is attached.)

### ***Waiting Periods***

Nineteen states have mandatory waiting periods prohibiting a woman from obtaining an abortion until a specified period of time after receiving a state-mandated lecture or materials. Connecticut does not have such a provision. Table 1 following indicates those states with waiting periods and those that are currently enforced.

**Table 1: State Laws on Waiting Periods for Abortions**

<i>State</i>	<i>Waiting Period</i>	<i>Enforced</i>	<i>Enjoined/ Not Enforced</i>
Delaware	Min. 24 hours		●
Idaho	Min. 24 hours	● 1	
Indiana	Min. 18 hours	●	
Kansas	Min. 24 hours	●	
Kentucky	Min. 2 hours		● 2
Louisiana	Min. 24 hours	●	
Massachusetts	Min. 24 hours		● 2
Michigan	Min. 24 hours		● 3
Mississippi	Min. 24 hours	●	
Montana	Min. 24 hours		● 4
Nebraska	Min. 24 hours	●	
North Dakota	Min. 24 hours	●	
Ohio	Min. 24 hours	●	
Pennsylvania	Min. 24 hours	●	
South Carolina	Min. 1 hour	●	
South Dakota	Min. 24 hours	● 5	
Tennessee	Min. 48 –72 hours		● 2
Utah	Min. 24 hours	●	
Wisconsin	Min. 24 hours		● 7
<b>Total</b>	<b>19</b>	<b>12</b>	<b>7</b>

1. This statute requires that a woman be provided with state-prepared materials at least 24 hours before an abortion, if reasonably possible.
2. A court has ruled that this provision is unconstitutional.
3. A permanent injunction enjoining enforcement of this law is still in effect pending on an appeal of a lawsuit.
4. A court has issued a preliminary injunction prohibiting enforcement of this law.
5. A court has ruled that the penalty provisions of this statute are unconstitutional and severable from the operations sanctions of the law.
6. A woman may not obtain an abortion until the third day after her initial consultation.
7. A court has issued an order prohibiting enforcement of this statute until the state prepared materials are available.

\* Source: National Abortion and Reproductive Rights Action League data, January 1998 - As reported by NCSL (May, 1998).

## ***Informed Consent***

Thirty states (Connecticut among them) have abortion -specific informed consent laws which require that women receive state-mandated information and materials on fetal development, prenatal care, and adoption. The other states are Alabama, Arkansas, California, Delaware, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wisconsin.

A court has issued a temporary restraining order prohibiting enforcement of Florida's law.

## ***Minors' Access to Abortions***

Thirty-nine states have laws that prohibit a minor from obtaining an abortion without parental consent or notice. Connecticut does not mandate parental consent or notice but it does require that before obtaining an abortion, a minor must receive counseling that includes discussion of the possibility of consulting her parents.

Currently, thirty of these state laws are enforced. Of the states that currently enforce such laws, two (Idaho, Utah) do not have a judicial or other bypass provision allowing a minor to obtain a court order in lieu of notifying her parents. Four states (Delaware, Maryland, Virginia, and West Virginia) allow a minor to obtain an abortion without parental consent or notice in certain circumstances if a physician or health professional waives the requirement.

Maine permits a minor to obtain an abortion without parental consent or court order if she receives counseling that includes the possibility of involving her parents or another adult family member.

Table 2 following lists those states with parental consent or notice requirements, and the status of the laws.

**Table 2: State Laws on Minors' Access to Abortion - Parental Consent or Notice Requirements**

<i>State</i>	<i>Consent</i>	<i>Notice</i>	<i>Enforced</i>
Alabama	✓		✓
Alaska	✓		
Arizona	✓		
Arkansas		✓	✓
California	✓		
Colorado	✓		
Delaware		✓	✓
Georgia		✓	✓
Idaho		✓	✓
Illinois		✓	
Indiana	✓		✓
Iowa		✓	✓
Kansas		✓	✓
Kentucky	✓		✓
Louisiana	✓		✓
Maine	✓		✓
Maryland		✓	✓
Massachusetts	✓		✓
Michigan	✓		✓
Minnesota		✓	✓
Mississippi	✓		✓
Missouri	✓		✓

**Table 2 (Continued)**

<i>State</i>	<i>Consent</i>	<i>Notice</i>	<i>Enforced</i>
Montana		✓	
Nebraska		✓	✓
Nevada		✓	



New Mexico	✓		
North Carolina	✓		✓
North Dakota	✓		✓
Ohio		✓	✓
Pennsylvania	✓		✓
Rhode Island	✓		✓
South Carolina	✓		✓
South Dakota		✓	✓
Tennessee	✓		
Utah		✓	✓
Virginia		✓	✓
West Virginia		✓	✓
Wisconsin	✓		✓
Wyoming	✓		✓
<b>Total</b>	<b>22</b>	<b>17</b>	<b>30</b>

Source: National Abortion and Reproductive Rights Action League Foundation Report, January, 1998.

### ***Viability Testing***

Four states have laws requiring physicians to perform tests to determine viability in certain circumstances (Alabama, Louisiana, Missouri, and Ohio). Courts have issued injunctions prohibiting enforcement of these laws in Louisiana and Ohio.

### ***Post-Viability Bans***

Forty states (including Connecticut) and the District of Columbia have laws that specifically prohibit abortion after viability under specified circumstances. Connecticut's law provides that no abortion can be performed after viability unless necessary to preserve the woman's life or health (CGS, § 19a-602(b)). The states without such laws are Alaska, Colorado, Hawaii, Mississippi, New Hampshire, New Jersey, New Mexico, Oregon, Vermont, and West Virginia.

JK:tjo

Attachment: OLR Report 98-R-0506

# **Appendix 1B**

## **ARTIFICIAL INSEMINATION LAW INNOVATIONS IN OTHER STATES**

### **The Connecticut General Assembly**

#### **Office of Legislative Research Report**

**No. 99-R-0639**

**June 11, 1999**

**By: Lawrence K. Furbish, Assistant Director**

You asked if other states had more comprehensive or innovative artificial insemination (AI) laws than Connecticut. You concern is that Connecticut's law covers only one limited type of artificial insemination situation and that in reality many other possibilities exist.

#### **SUMMARY**

At least 34 states have adopted laws establishing some of the rights and responsibilities of AI donors and donees, and two uniform laws have been drafted on this issue. But it does not appear that any states have a comprehensive AI law or one that could be considered a model. The material we have been able to obtain suggests that this is an area of the law where statutory changes have not kept pace with technological and societal changes. A few states have laws that cover more situations than Connecticut's, but commentators indicate that court decisions have been very inconsistent in interpreting these laws.

This report is a start at answering your question, and it will be followed by one or more additional reports that will examine specific components of the issue. The information in this report comes from a recent study by the New York State Task Force on Life and the Law. This group has existed since 1985, and its earlier report on surrogacy resulted in New York's surrogate parenting law.

In April 1998 the Task Force published a report on Assisted Reproductive Technologies (ART), which contained extensive analysis and policy recommendations on many clinical, legal, and other issues surrounding ART. The chapter on determining parental rights and responsibilities is the most relevant to your question and it is summarized in this report. We have clustered the information in five areas: (1) semen donations, (2) egg and embryo donations, (3) surrogate parenting, (4) conception or gestation after a parent's death, and (5) the rights of nonbiological parents outside of marriage.

#### **SEMEN DONATIONS**

At common law, a child born to a married woman is presumed to be the child of the woman's husband, although this presumption of legitimacy can be rebutted by evidence. Most states have laws making the

presumption of legitimacy irrebuttable when a married woman undergoes AI with donor semen, provided specific statutory requirements are met. These conditions usually include the husband's written consent and participation by a licensed physician.

Some of the statutes specifically terminate the semen donor's parental rights, but others are silent on this point. This has led to differing court interpretations. For example, Virginia courts have ruled that even though that state's statute made the child "legitimate," because it did not specifically terminate the donor's parental rights, the woman's husband was advised to adopt the child to remove any doubts about paternity (*Welborn v. Doe*, 10 Va. App. 631 (1990)).

Regarding semen donations to an unmarried woman, few state statutes provide guidance concerning the parental rights of the donors. In the past such donations were often anonymous, but more recent public health concerns, such as HIV transmission, have resulted in gamete banks keeping extensive records about semen donors, including identifying information. If a semen donor is legally recognized as the father, not only might he be found liable to contribute to the financial support of the child, but he could have a protected legal interest in establishing a relationship with the child, despite the wishes of the mother.

New York's statute does not address the rights and responsibilities of men who donate semen to unmarried women. A case that is still pending involves a man who donated semen to an unmarried woman who was involved in a long-term relationship with another woman. The donor and recipient had agreed that the man would not have a parental relationship with the child, but that he could visit her. When the donor's relationship with the woman soured, he sought a legal order of paternity and visitation. The lower court found the donor to be the child's biological father, but using a best-interest-of-the-child analysis, refused to enter the paternity order. The Appellate Division overturned, ruling that best interest is relevant to visitation but not paternity (*Thomas S. v. Robin Y.*, 209 A.D. 2d 298 (1994)).

## **EGG AND EMBRYO DONATIONS**

An egg donation involves a woman who gestates and gives birth to a child conceived with another woman's egg. The birth mother intends to act as the child's social parent, but the egg donor is the biological parent. It is possible that in some cases the latter could assert parental rights or be liable for parental responsibilities. Five states have laws that specifically make a woman who gives birth to a child conceived with a donor egg the child's legal mother (Florida, North Dakota, Oklahoma, Texas, and Virginia). New York courts have ruled that when a child is conceived with a donor egg, the birth mother is the child's legal mother (*McDonald v. McDonald*, 196 A.D. 2d 7 (1994)).

Embryo donation situations are similar but can be even more complicated. Depending on the specific facts, a child can have a genetic mother and father and a birth mother or a birth couple. Very few states have laws covering these situations. In Florida and Texas when an embryo is donated to a married couple and all parties to the procedure consent, the spouses are the legal parents of the child. In Louisiana an embryo donation, depending on the facts, can require use of the adoption statutes.

## **SURROGATE PARENTING ARRANGEMENTS**

In 1988, the N. Y. Task Force on Life and the Law issued a report on surrogate parenting, and in response in 1992 the Assembly adopted New York's surrogate parenting law. It declares surrogacy contracts void and unenforceable and bans payment of fees to surrogates or brokers. But it does not prohibit voluntary and noncommercial surrogate parenting arrangements.

There are two types of surrogacy: genetic/gestational and gestational. In the first the surrogate undergoes AI with the intended father's semen. She is the child's biological mother and carries it to birth. She then relinquishes her parental rights and the father's wife or partner adopts the child through the stepparent procedure. In a gestational surrogacy an embryo created using the egg and semen of the intended mother and father is implanted in the surrogate. In this situation, the child has three biological parents: the genetic parents and the birth mother. The most complicated situation of all is when the semen and egg are donated

by one couple, the embryo implanted in a surrogate mother, and the baby intended for a different couple. This gives rise to genetic parents, intended parents, and a birth mother. A still unresolved California case involves exactly this situation, and the latest decision leaves the child without any legal parents.

Most states that regulate or prohibit surrogate parenting contracts do not distinguish between the different types of surrogacy situations described above. In addition, most direct the courts to resolve disputes based on the best interest of the child with no presumption in favor of either parent. Court rulings have been inconsistent.

Virginia's statute requires judicial pre-approval of surrogacy agreements and provides that if this does not occur, the genetic mother in a gestational surrogacy arrangement is the child's legal mother. Courts in California and Ohio have ruled that the genetic connection is more important than the gestational contribution. But some commentators have argued that the gestational mother should have greater rights because the gestational mother is the "natural" mother and pregnancy and childbirth are psychologically and physically more demanding than egg production.

## **CONCEPTION OR GESTATION AFTER A PARENT'S DEATH**

Scientific advances in preserving semen and embryos have made it possible for children to be conceived and gestated long after one or both of the genetic parents are dead. This has implication especially for inheritance. For example, New York's law covers children "conceived before, but born alive after" a property distribution under a will (N.Y. Est. Powers & Trusts Law § 2-1.3(2)). This law was intended to cover cases where a man dies during his wife's pregnancy, but it could be construed to cover children born after implantation of an embryo created from semen and an egg from people who have died.

The only reported case involving this situation was in California where an American couple died in an airplane crash leaving two embryos frozen in an Australian facility. The estate's executors were reluctant to distribute the estate until the embryo situation was resolved. Ultimately the court ruled that children resulting from implantation of the embryos could not assert a claim because under California law a child must be born or in utero when the parent dies.

## **NONBIOLOGICAL PARENTS' RIGHTS OUTSIDE OF MARRIAGE**

Under current laws, establishing a parent-child relationship usually requires either a biological connection or a judicial order of adoption. But recently non-marital partners of biological parents have increasingly been seeking to adopt without terminating the biological parent's parental rights. Courts in New York and several other states have ruled that such adoptions can proceed based on the injustice of denying such children the right to two parents solely based on the biological parent's sexual orientation or marital status. In *Matter of Jacob and Matter of Dana* (86 N.Y. 2d 651 (1995)), the court concluded that such an outcome might raise constitutional issues in light of the historical purpose of adoption statutes, namely the best interest of the child.

## **Appendix 1C**

### **ABORTIONS FOR MINORS: OTHER STATES' PARENTAL INVOLVEMENT LAWS**

2003-R-0050

February 3, 2003

By: Susan Price-Livingston, Associate Attorney

You asked about other states' laws requiring parental involvement in a minor daughter's access to abortion services.

#### **Summary**

The United States Supreme Court has ruled that pregnant minors are constitutionally entitled to make abortion decisions without unreasonable state interference. But the Court has also found a state's interest in protecting immature minors to be sufficient to sustain parental notification and consent laws that permit minors to demonstrate that parental involvement is not warranted.

Forty-two states (all but Connecticut, Hawaii, Maine, New Hampshire, New York, Oregon, Vermont, and Washington) have laws requiring parental involvement in an unemancipated minor's decision to have an abortion. Twenty-two of them require the physician to obtain parental consent before performing the abortion; the rest require physicians to wait a specified time (in most cases either 24 or 48 hours) after a parent is notified about the planned abortion. Almost all have an alternate route that a minor can use instead of involving her parents and exceptions for medical emergencies. Some also have special bypass rules (1) when the pregnant girl reports that she is the victim of abuse, neglect, assault, or incest or (2) that allow her to designate other adult relatives who can act in place of a parent.

#### **Connecticut law**

Connecticut does not have either a parental consent or notification law. But the law does require that a physician or counselor give the minor objective information about abortion and its alternatives and discuss the possibility of involving her parents or other adult family members in her decision making (CGS § 19a-601(a)). And physicians, as mandated reporters, must report suspected abuse or neglect to the Department of Children and Families, which must, in turn, conduct an investigation (§ 17a-101a).

#### **Parental consent laws**

##### ***U.S. Supreme Court Ruling***

In *Planned Parenthood of Central Mo. v. Danforth*, the U.S. Supreme Court ruled that a statute requiring a minor to obtain her parents' permission before obtaining an abortion unconstitutionally infringed on her abortion rights (428 U.S. 52, 75 (1976)). Subsequent Court rulings have found consent laws constitutional, so long as the state provides an alternative procedure for a pregnant minor to show that she is mature enough to make the abortion decision herself or that, despite her immaturity, an abortion is in her best interests (*City of Akron v. Akron Center for Reproductive Health Inc.*, 462 U.S. 416 (1983)). The alternative to parental consent must assure that resolution of this issue "will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained" (*Bellotti v. Baird*, 443 U.S. 622 (1979)) (plurality opinion).

### *State Laws Currently in Effect*

The Alan Guttmacher Institute, a research and advocacy organization supporting abortion rights, reports that as of December 1, 2002 parental consent laws were in effect in 18 states. Table 1 compares some of the major provisions of these laws. The text of the laws is reproduced in Appendix A.

**Table 1: Parental Consent Laws Currently in Effect**

<i>State</i>	<i>No. of Parents Involved</i>	<i>When Physicians Can Waive</i>	<i>Other Relatives Can Substitute for Parent</i>
<b>Alabama</b> <i>Ala. Code §§ 26-21-1 to -8</i>	1	Medical emergency and certain sex abuse, assault, incest, or neglect cases	No
<b>Alabama</b> <i>Ala. Code §§ 26-21-1 to -8</i>	1	Medical emergency and certain sex abuse, assault, incest, or neglect cases	No
<b>Arizona</b> <i>Ariz. Rev. Stat. Ann. §§ 36-2152, 2-215(22)</i>	1	Medical emergency and certain sex abuse, assault, incest, or neglect cases	No
<b>Idaho</b> <i>Idaho Code §§ 18-609A, -614, -602</i>	1	Medical emergency and certain abuse and neglect cases	No
<b>Indiana</b> <i>Ind. Code Ann. § 16-34-2-4</i>	1	Medical emergency	No
<b>Kentucky</b> <i>Ky. Rev. Stat. Ann. § 311.732</i>	1	Medical emergency	No
<b>Louisiana</b> <i>La. Rev. Stat. Ann. § 40:1299.35.5</i>	1	No	No
<b>Massachusetts</b> <i>Mass. Gen. Laws Ann. Ch 112§12S</i>	2 (limited by court ruling to 1)	No	No
<b>Michigan</b> <i>Mich. Comp. Laws Ann. §§ 722.901 to .908</i>	1	Medical emergency	No
<b>Mississippi</b> <i>Miss. Code Ann. §§ 41-41-51, -53, -55</i>	2	Medical emergency	No
<b>Missouri</b> <i>Mo. Ann. Stat. § 188.028</i>	1	No	No

Table 1: Parental Consent Laws Currently in Effect  
-Continued-

<i>State</i>	<i>No. of Parents Involved</i>	<i>When Physicians Can Waive</i>	<i>Other Relatives Can Substitute for Parent</i>
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<b>No. Carolina</b> <i>N.C. Gen. Stat. Ann.</i> §§ 90-21.6 to –21.10	1	Medical emergency	Grandparents if pregnant girl has lived with them for at least 6 months
<b>No. Dakota</b> <i>N.D. Cent. Code §§</i> 14-02.1 to –03.1	2	Medical emergency	No
<b>Pennsylvania</b> <i>18 Pa. Cons. Stat. Ann.</i> § 3206	1	Medical emergency	No
<b>Rhode Island</b> <i>R.I. Gen. Laws Ann. §</i> 23-4.7-6	1	No	No
<b>So. Carolina</b> <i>S.C. Code Ann. §§44-</i> 41-30 to 37	1	Medical emergency and certain abuse, assault, incest, or neglect cases	Grandparents
<b>Tennessee</b> <i>Tenn. Code Ann. §§</i> 37-10-301 to –307	1	Medical emergency and certain incest cases	No
<b>Wisconsin</b> <i>Wis. Stat. Ann. §§</i> 48.375 and 990.01(2)	1	Medical emergency and certain abuse, assault, incest, or neglect cases	Grandparents and aunts, uncles, or siblings at least 25 years old
<b>Wyoming</b> <i>Wyo. Stat. Ann. § 35-6-</i> 118	1	No	No

Sources: “State Policies in Brief: Parental Involvement in Minors’ Abortions” (Alan Guttmacher Institute, 12/1/02) and independent OLR review of state statutes

Courts in eight of these states have upheld the laws against constitutional challenges: Arizona, Massachusetts (judicially limited to require consent of one parent, not two), Michigan, Mississippi, Missouri (U.S. Supreme Court), North Carolina, Pennsylvania (U.S. Supreme Court), and Tennessee.

Enforcement of consent laws in four other states (Alaska, California, New Mexico, and Ohio) has been blocked by court rulings or attorney general opinions. States whose laws have been enjoined are not included in Table 1 or Appendix A.

## Parental Notification Laws

### U.S. Supreme Court Ruling

The Supreme Court has never directly ruled on whether or not parental notification laws should be given the same level of constitutional scrutiny as consent laws are subject to. But it has determined that state laws that require physicians to wait 48 hours after a minor’s parents have been notified about her decision to have an abortion do not unreasonably delay abortion access (*Hodgson v. Minnesota*, 497 U.S. 417 (1990)). It has ruled that notice to one parent is all that can be constitutionally required (*Id.*, at 423) and has approved judicial bypass procedures similar to those discussed above.

### State Laws in Effect

Fourteen states currently have enforceable parental notification laws. Of these, all except Utah have judicial

bypass procedures, permitting the minor to demonstrate to a judge that she is sufficiently mature and well informed to make the decision independently or that parental notification is not in her best interests. Most states require that reasonable efforts be made to give a minor's parents actual notice, but permit notice by certified mail when these efforts fail. In the latter case, the waiting period typically does not begin to run until the day after the notice is mailed. Most laws also have a mechanism allowing a parent to waive the notice and waiting period.

Delaware's law applies only to minors who are under age 16, while Maryland's is limited to minors (under age 18) who are living with a parent. And West Virginia exempts minors who have graduated from high school from the parental notification mandate.

Table 2 compares some of the major provisions of the state parental notification laws. Their text is reproduced in Appendix B.

**Table 2: Parental Notification Laws in Effect**

<i>State</i>	<i>Length of Waiting Period</i>	<i>When Physician Can Waive</i>	<i>Notice to Other Relatives in Lieu of Parent</i>
<b>Arkansas</b> <i>Ark. Code Ann. §§ 20-16-801 to -808</i>	48 hrs.	Medical emergency and certain cases of abuse, assault, incest, or neglect	No
<b>Delaware</b> <i>Del. Code Ann. Tit. 24, §§ 1780-1789B</i>	24 hrs.	Medical emergency or if grandparent or unaffiliated mental health professional provides counseling and concludes it is in minor's best interest to waive parental notification	Grandparent (see waiver)
<b>Georgia</b> <i>Ga. Code Ann. §§ 15-11-110 to -118</i>	24 hrs. or 72 hrs. if by certified mail	Medical emergency	No
<b>Iowa</b> <i>Iowa Code Ann. §§ 135L.1-3 and 135L.6-8</i>	48 hrs.	Medical emergency and certain cases of child or sexual abuse	Grandparent (must be given notice that they can refuse to accept notice and that they can be held civilly liable if they accept)
<b>Kansas</b> <i>Kan. Stat. Ann. §§65-6701 et seq.</i>	Not specified	Medical emergency and incest (minor must receive counseling from clergy or non-affiliated mental health professional)	No
<b>Maryland</b> <i>(Md. Ann. Code art. 1, §24</i>	Not specified	Medical emergency or if, in physician's professional judgment, (1) notice to parent may lead to physical or emotional abuse, (2) minor is mature and capable of giving informed consent, or (3) abortion is in her best interests	No
<b>Minnesota</b> <i>Minn. Stat. Ann. §§ 144.343 and 645.451</i>	48 hrs.	Medical emergency and certain cases of physical or sexual abuse or neglect	No
<b>Nebraska</b> <i>Neb. Rev. Stat. §§ 71-6901 to -6909</i>	48 hrs.	Medical emergency and certain cases of physical or sexual abuse or neglect	No

**Table 2: Parental Notification Laws in Effect**

-Continued-



<i>State</i>	<i>Length of Waiting Period</i>	<i>When Physician Can Waive</i>	<i>Notice to Other Relatives in Lieu of Parent</i>
<b>Ohio</b> <i>Ohio Rev. Code Ann. § 2919.121</i>	24 hrs.	Medical emergency	Grandparent, step-parent, or sibling age 21 or older (relative and minor must submit statements that minor has fear of physical, sexual, or severe emotional abuse by parent based on past pattern of such behavior)
<b>So. Dakota</b> <i>S.D. Codified Laws §§ 36-9A-1, -15, and -17.2</i>	48 hrs.	Medical emergency	No
<b>Texas</b> <i>Tex. Fam. Code Ann. §§ 33.001 to .011</i>	48 hrs.	No	No
<b>Utah</b> <i>Utah Code Ann. § 76-7-304</i>	Not specified	No	No
<b>Virginia</b> <i>Va. Code Ann. §§ 16.1-228 and -241(V)</i>	24 hrs. or 72 hrs. if by certified mail	Medical emergency and certain abuse and neglect cases	No
<b>W. Virginia</b> <i>W. Va. Code Ann. §§ 16-2F-1 to -0</i>	24 hrs. or 48 hrs. if by certified mail	When physician not affiliated with abortion provider determines that (1) minor is mature enough to make the decision independently or (2) parental notice is not in her best interests	No

Sources: “State Policies in Brief: Parental Involvement in Minors’ Abortions” (Alan Guttmacher Institute, 12/1/02) and independent OLR review of state statutes

Courts in six of these states have upheld the laws against constitutional challenges: Georgia, Iowa, Minnesota (U.S. Supreme Court limited to notification of one parent only), Nebraska, Ohio (but a court has enjoined enforcement of a successor statute), and Virginia.

The Guttmacher Institute reports that enforcement of parental notification laws have been blocked in seven other states (Colorado, Florida, Illinois, Montana, Nevada, New Jersey, and Oklahoma). Those states are not included in Table 2 or Appendix B.

# Paternity Actions in Connecticut

*A Guide to Resources in the Law Library*

- "The purpose of what were formerly called bastardy actions and are now called paternity proceedings is to relieve the public of the burden of supporting an illegitimate child and to provide the mother with assistance in carrying out her obligation of support." Kuser v. Orkis, 169 Conn. 66, 71, 362 A.2d 943 (1975).
- "In this State there are only three ways of legally establishing paternity: (1) the marital presumption if the mother and the putative father are married to each other; (2) adjudication of paternity by a court of competent jurisdiction; or (3) a formal acknowledgment of paternity in accordance with the acknowledgment statute." Hjarne v. Martin, No. FA00-0631333 (Conn. Super. Ct., J.D. Hartford, Apr. 21, 2002).
- "A paternity petition 'may be brought at any time prior to the child's eighteenth birthday, provided liability for past support shall be limited to the three years next preceding the date of the filing of any such petition.' Connecticut General Statute § 46b-160." Watters v. Mase, No. FA04 400 39 40 (Aug. 12, 2005).
- "The private interests that are at stake in this litigation involve both the putative father and the child . . . . The putative father faces a possible loss of liberty if he is found 'guilty' and subsequently fails to pay court ordered child support. General Statutes §§ 46b-171, 46b-215, 53-304. In addition, both father and child have substantial financial and property interests at stake. The father is liable for past, present and future child support. General Statutes § 46b-171. In later years the child may be liable for the support of its father; General Statutes § 53-304; and may eventually have claims upon the father's estate. The child's interests also extend to its health, which may depend upon an accurate family medical history." Lavertue v. Niman, 196 Conn. 403, 493 A.2d 213, (Conn. 1985).
- "A paternity petition 'may be brought at any time prior to the child's eighteenth birthday, provided liability for past support shall be limited to the three years next preceding the date of the filing of any such petition.' Connecticut General Statute § 46b-160." Watters v. Mase, No. FA04 400 39 40 (Aug. 12, 2005).
- "A child shall be made a party to a paternity action under the provisions of General Statutes § 46b-172a (c) when the putative father requests an adjudication of paternity. The legislative history for § 46b-172a shows that there is legislative intent for the child to be a party to paternity proceedings." Ragin v. Lee, 78 Conn. App. 848, 854, 829 A.2d 93 (2003).
- "An **educational support order** may be entered with respect to any child who has not attained twenty-three years of age and shall terminate not later than the date on which the child attains twenty-three years of age.' Connecticut General Statute § 46b-56c(a) An order may be issued pursuant to a Petition for Paternity and Support. Connecticut General Statute § 46b-56c(b)(3). The educational support statute provides that a 'court may not enter an educational support order pursuant to this section unless the court finds as a matter of fact that it is more likely than not that the parents would have provided support to the child for higher education or private occupational school if the family were intact.' Connecticut General Statute § 46b-56(c)." Watters v. Mase, No. FA04 400 39 40 (Aug. 12, 2005). (emphasis added).

# Section 2.1

## Rights and Status of Children Born Out-of-Wedlock

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the rights and status of children born out-of-wedlock in Connecticut

### **DEFINITION:**

- **Child Out of Wedlock:** "Unlike a valid marriage which creates a legal status between the parties and has been said to be the marital res capable of furnishing the basis for jurisdiction of a court, the birth of a child out of wedlock does not, per se, create any legal status between the child and a putative father. Generally, the legitimatization of such a child vis-a-vis his 'father' is a matter of statute." Hayes v. Smith, 194 Conn. 52, 64, 480 A.2d 425 (1984).
- **Child of a Marriage:** "The issue of any void or voidable marriage shall be deemed legitimate. Any child born before, on or after October 1, 1976, whose birth occurred prior to the marriage of his parents shall be deemed a child of a marriage." CONN. GEN. STATS. § 46b-60 (2005)
- **Equal Protection of the Law:** "The United States Supreme Court, moreover, has held that illegitimate children cannot be denied equal protection of the law." Trimble v. Gordon, 430 U.S. 762, 776, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1977).

### **STATUTES:**

- CONN. GEN. STATS. (2005)
  - Chapter 802b. Decedents' estate
    - § 45a-438(b). Children born out of wedlock may inherit. [Table 1](#)
  - Chapter 815j. Dissolution of marriage, legal separation and annulment
    - § 46b-45a. Allegation of pregnancy in pleadings. Disagreement as to paternity. Hearing
    - § 46b-61. Orders re children where parents live separately. "In all cases in which the parents of a minor child live separately, the superior court for the judicial district where the parties or one of them resides may, on the application of either party and after notice given to the other, make any order as to the custody, care, education, visitation and support of any minor child of the parties, subject to the provisions of sections 46b-54, 46b-56, 46b-57 and 46b-66. Proceedings to obtain such

orders shall be commenced by service of an application, a summons and an order to show cause."

Chapter 815y. Paternity matters

§ 46b-160. Petition by mother or expectant mother.

§ 46b-172a. Claim for paternity by putative father

(a). "The child shall be made a party to the action."

Chapter 816. Support

§ 46b-215. Relatives obligated to furnish support, when

(a)(4). "For the purpose of this section, the term 'child' shall include one born out of wedlock whose father has acknowledged in writing paternity of such child or has been adjudged the father by a court of competent jurisdiction, or a child who was born before marriage whose parents afterwards intermarry."

**CASES:**

U.S. Supreme Court

- Gomez v. Perez, 409 U.S. 535, 538, 93 S.Ct. 872, 35 L.Ed. 2d 56 (1973). "Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother." Connecticut
- Foster v. Smith, 91 Conn. App. 528, 534-535, 881 A.2d 497 (2005). Connecticut appellate courts have decided that a minor child who is the subject of a paternity action has a fundamental interest in an accurate determination of paternity. See *Lavertue v. Niman*, 196 Conn. 403, 409, 493 A.2d 213 (1985); *Ragin v. Lee*, supra, 78 Conn. App. 861. The United States Supreme Court has also acknowledged that 'both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination.' *Little v. Streater*, 452 U.S. 1, 13, 101 S.Ct. 2202, 68 L.Ed.2d 627 (1981). In *Ragin v. Lee*, supra, 864, this court determined that a minor child had standing to bring a motion to open a default judgment of paternity on the basis of the child's independent right to an accurate determination of paternity in that proceeding. In reaching that decision, this court took into account the fact that 'Connecticut has long recognized that children have a separate and independent interest in family relations matters . . . [and that] . . . [o]ur Supreme Court has recognized that both the father and the child in a paternity proceeding have an interest in seeing that their rights to companionship, care and custody are accurately adjudicated.' (Citations omitted.) Id., 861. Furthermore, our Supreme Court has considered the child's interests in that regard to be especially strong. *Lavertue v. Niman*, supra, 409. 'Any determination that a particular individual is a child's biological father may have profound sociological and psychological ramifications. . . . It is in the child's interest not only to have it adjudicated that some man is his or her father and thus liable for support, but to have some assurance that the correct person has been so identified.'"
- Shockley v. Okeke, 48 Conn. Sup. 647, 856 A.2d 1054 (2004). "The court finds that the legal name of the minor child is as acknowledged by both the parents of the child in the acknowledgment of paternity that is on file both in the present case and in the companion custody and visitation case. A similar method of assigning a legal name to a minor child has been approved in *Don v. Don*, supra, 142 Conn. [309]313 [1955] and *In re Tanaja G.*, Superior Court, Juvenile Matters at Hartford (April 28, 2000) (Keller, J.). These are the only two Connecticut court decisions which, in any way, refer to a court

determining a minor child's original legal name. The acknowledgment of paternity in the present case was signed the day after the child's birth.”

- Ragin v. Lee, 78 Conn. App. 848, 863, 829 A.2d 93 (2003). “We hold that a child who is the subject of a paternity action has fundamental interest in an accurate determination of paternity that is independent of the state's interest in establishing paternity for the benefit of obtaining payment for the child's care and any interest that the parents may have in the child.”
- Brancato v. Moriscato, No. CV 03 0472496 S (Conn. Super. Ct., J.D. New Haven, Feb. 27, 2003) “To suggest that paternity can only be established in this one way[the applicant . . . show that the decedent acknowledged her in writing and treated her openly as his child]is a gross misapplication of case law and the statutes pertaining to paternity and intestate inheritance.”
- W. v. W., 248 Conn. 487, 495, 728 A.2d 1076 (1999). “The second issue on appeal is whether the trial court acted improperly when it equitably estopped the defendant from denying that he is the father of the plaintiff's older child. We conclude that the trial court's action was proper.”
- Andrews-White v. Mitchell, 15 Conn. L. Rptr. 629 at 629-30 (Hartford 1995), 1995 WL 684779. “The defendant accurately notes the statutory limits as to who may initiate paternity actions; C.G.S. § 46b-160 (mother or expectant money); C.G.S. § 46b-162 (action by state or town) and C.G.S. § 46b-172a [claim for paternity by putative father]. The statutory scheme is devoid of reference to an action by a child or her guardian. This is a disturbing scenario when one considers that it is the child's interest which is at stake; as it is the child who has the primary interest in establishing a relationship to its father. Pickett v. Brown, 462 U.S. 1, 16 n.15 (1983).

This Court for the reasons set forth below, finds that the child's interest in establishing paternity is a fundamental state and federal constitutional liberty interest of the child. The common law recognizes this right and the judicial system must afford the child an opportunity to exercise and protect her interest.”

- Stevens v. Leone, 35 Conn. Supp. 237, 239-240, 406 A.2d 402 (1979). “It seems obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment [now CONN. GEN. STAT. § 46b-61 (2001)] was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage.”
- Franklin v. Congelosi, 6 Conn. Cir. 357, 360, 273 A.2d 291 (1970). “Moreover, ‘[i]f the father of an illegitimate child is legally bound to support it, his promise to furnish such support or to pay for support rendered is itself enforceable without any consideration.’ 1A Corbin, Contracts § 231, p.347; note, 20 A.L.R.3d 500, 520.”

#### **DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

#### **WEST KEY NUMBERS:**

- *Children Out-Of-Wedlock*
  - # 1-19. Status in general
  - # 20. Custody
  - # 21-23. Support
  - # 80-90. Property

#### **ENCYCLOPEDIAS:**

- 14 C.J.S. *Children Out-of-Wedlock* (1991).

- §§ 1-12. In general
- §§ 13-22. Evidence of legitimacy
- §§ 23-29. Legitimation and similar matters
- §§ 30-33. Repudiation of legitimacy or presumed paternity
- §§ 34-39. Custody and protection
- §§ 40-62. Support, maintenance and education
- §§ 63-69. Inheritance by or through children born out of wedlock
- 41 AM. JUR. 2d *Illegitimate Children* (2005).
  - I. Overview; Who are illegitimate children
  - II. Presumption of legitimacy and paternity
  - III. Voluntary acknowledgment and denial of paternity
  - IV. Civil action to establish paternity
  - V. Support of children
  - VI. Custody of children
  - VII. Capacity to take property; Inheritance rights
  - VIII. Legitimation
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA 2d 1 (1994).
  - § 17. Parties. Generally.
- George L. Blum, Annotation, *Right Of Illegitimate Child To Maintain Action To Determine Paternity*, 86 ALR5th 637 (2001).
- William G. Phelps, Annotation, *Eligibility Of Illegitimate Child For Survivor's Benefits Under Social Security Act, Pursuant To § 216(h)(2)(A) Of Act (42 USCS § 416(h)(2)(A), Where State Intestacy Law Denying Inheritance Right, Or Application Of That State Law To § 216(h)(2)(A), May Violate Child's Right To Equal Protection Of Laws*, 116 ALR Fed 121(1993).
- Lee R. Russ, Annotation, *Right Of Illegitimate Grandchildren To Take Under Testamentary Gift To "Grandchildren"*, 17 ALR4th 1292 (1982).
- Catherine R. Lazuran, Annotation, *Posthumous Illegitimate Child As "Child" Entitled To Survivor's Benefits Under § 216 Of The Social Security Act (42 USCS § 416)*, 36 ALR Fed 166 (1978).
- Donald M. Zupanec, Annotation, *Right Of Illegitimate Child, After Levy v Louisiana, To Recover Under Wrongful Death Statute For Death Of Putative Father*, 78 ALR3d 1230 (1977).
- Irwin J. Schiffres, Annotation, *Discrimination On Basis Of Illegitimacy As Denial Of Constitutional Rights*, 38 ALR3d 613 (1971).
- Annotation, *Supreme Court's Views As To The Status And The Rights Of Illegitimate Children*, 41 LEd. 2d 1228 (1975).
- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  - Chapter 38. Child Support
    - § 38.8. Illegitimate children
    - § 38.11. Support claim not based on birth or adoption
    - § 38.13. Child's need for maintenance
- ROBERT H. FOLSOM AND GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2005).
  - Chapter 3. Guardianships
    - § 3:6. Status of illegitimate children
- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).
  - Chapter 1. Overview of disputed paternity actions
    - § 1.03. Present legal status of the nonmarital child
      - [1] Custody

**TEXTS &  
TREATISES:**

- [2] Visitation
- [3] Support order and agreements
- [4] Rights of inheritance
- [5] Wrongful death recovery
- [6] Workers' compensation
- [7] Social security benefits
- [8] Citizenship
- [9] Income tax dependency exemption
- Chapter 5. Rights enforceable in paternity actions
  - § 5.01. Effect of judgment
  - § 5.02. Child support
  - § 5.03. Custody and visitation
  - § 5.04. Name change
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 63. Paternity proceedings
    - § 63.01. Introduction
      - [1]. Nature and purpose of proceedings generally
      - [d]. legitimation

**LAW REVIEWS:**

- Randy Curry, *Illegitimate Children—Protecting Their Rights In The Courtroom*, 8 JOURNAL OF JUVENILE LAW 234 (1984).
- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 CONNECTICUT LAW REVIEW 1 (1974).

**COMPILER:**

Compiled by Lawrence Cheeseman, Connecticut Judicial Branch Law Library,  
One Court Street, Middletown, CT 06457, (860) 343-6560.

**Table 3 Child Born Out-of-Wedlock: Selected Statutory Provisions**

<h2 style="text-align: center;">Children Born Out-of-Wedlock: Selected Statutory Provisions</h2>	
Birth Certificate	<p>"No certificate of birth shall contain any specific statement that the child was born in or out of wedlock or reference to illegitimacy of the child or to the marital status of the mother, except that information on whether the child was born in or out of wedlock and the marital status of the mother shall be recorded on a confidential portion of the certificate pursuant to section 7-48. Upon the completion of an acknowledgment of paternity at a hospital, concurrent with the hospital's electronic transmission of birth data to the department, or at a town in the case of a home birth, concurrent with the registration of the birth data by the town, the acknowledgment shall be filed in the paternity registry maintained by the department, as required by section 19a-42a, and the name of the father of a child born out of wedlock shall be entered in or upon the birth certificate or birth record of such child. All properly completed post birth acknowledgments or certified adjudications of paternity received by the department shall be filed in the paternity registry maintained by the department, and the name of the father of the child born out of wedlock shall be entered in or upon the birth record or certificate of such child by the department, if there is no paternity already recorded on the birth certificate. If another father's information is recorded on the certificate, the original father's information shall not be removed except upon receipt by the department of a certified order by a court of competent jurisdiction in which there is a finding that the individual recorded on the birth certificate, specifically referenced by name, is not the child's father, or a finding that a different individual than the one recorded, specifically referenced by name, is the child's father. The name of the father on a birth certificate or birth record shall otherwise be removed or changed only upon the filing of a rescission in such registry, as provided in section 19a-42a. The Social Security number of the father of a child born out of wedlock may be entered in or upon the birth certificate or birth record of such child if such disclosure is done in accordance with 5 USC 552a note.." CONN. GEN. STATS. § 7-50 (2005).</p>
Health insurance	<p>"An insurer shall not deny enrollment of a child under the group health plan of the child's parent if: (1) The child was born out of wedlock, provided the father of the child has acknowledged paternity pursuant to section 46b-172 or has been adjudicated the father pursuant to section 46b-171; (2) the child is not claimed as a dependent on the federal income tax return of the parent; (3) the child does not reside with the parent or in the insurer's service area; or (4) if the child is receiving, or is eligible for benefits under a state medical assistance plan required by the Social Security Act.." CONN. GEN. STATS. § 38a-497a(c) (2005).</p>



Inheritance	<p>"Except as provided in section 45a-731, for purposes of intestate succession by, through or from a person, an individual is the child of his genetic parents, regardless of marital status of such parents. With respect to a child born out of wedlock, the father of a child born out of wedlock shall be considered a parent if (1) the father and mother have married after the child's birth, or (2) the father has been adjudicated the father of the child by a court of competent jurisdiction, or (3) the father has acknowledged under oath in writing that he is the father of the child, or (4) after the death of either the father or the child, paternity has been established by the Probate Court by clear and convincing evidence that the father has acknowledged in writing that he is the father of the child and has openly treated the child as his.." CONN. GEN. STATS. § 45a-438(b) (2005).</p>
	<p>"The adopting parent and the adopted person shall have rights of inheritance from and through each other and the biological and adopted relatives of the adopting parent. The right of inheritance of an adopted person extends to the heirs of such adopted person, and such heirs shall be the same as if such adopted person were the biological child of the adopting parent;" CONN. GEN. STATS. § 45a-731(2) (2005)</p>

# Children and Annulment of Marriage

*A Guide to Resources in the Law Library*

- SCOPE:**
- Bibliographic resources relating to children and annulment of marriage including child support, custody and visitation
- SEE ALSO:**
- [§ 26.6h Blood and DNA Testing](#)
  - [§ 26.6i Evidence](#)
  - [§ 26.6j Defenses](#)
- STATUTES:**
- CONN. GEN. STAT. (2005)  
§ 46b-60. **Orders re Children and Alimony in Annulment Cases.** The issue of any void or voidable marriage shall be deemed legitimate."
- CASES:**
- Hames v. Hames, 163 Conn. 588, 593, 316 A.2d 379 (1972). "Section 46-28 of the General Statutes provides that the issue of any void or voidable marriage shall be deemed legitimate and permits the Superior Court to order alimony, custody and child support as it might in a divorce proceeding."
  - Sarantos v. Sarantos, 18 Conn. Supp. 472, 474 (1953). "Our statute (§ 7341) empowers our court to annul a marriage illegal under the laws of the foreign state in which it was celebrated. It does not purport to carry over to Connecticut the foreign law of the state in which the marriage was celebrated as to the legitimacy of the offspring of such marriage. The question of legitimacy under the facts here is governed by the law of Connecticut, which at the time of the child's birth was, and up to the present time continuously has been, the domicile of both parents and of the child."
- DIGESTS:**
- ALR INDEX: *Legitimacy of children*
  - ALR DIGEST: *Children Out-of-Wedlock*
  - CONNECTICUT FAMILY LAW CITATIONS: *Paternity*
- TEXTS & TREATISES:**
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (1999).  
Chapter 14. Procedure in Annulment Actions  
§ 14.8 Legitimacy of children
- ENCYCLOPEDIAS:**
- 4 AM. JUR. 2D *Annulment of Marriage* § 85 (1995).
  - 41 AM. JUR. 2d *Illegitimate Children* (2005).  
Presumptions of legitimacy and paternity

§ 20. Presumption where child born after annulment, divorce, or separation

- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
  - § 3. Issue of void or voidable marriage
  - § 4. \_\_\_\_\_. Statutory provisions
  - § 17. Birth after termination of marriage
- Ferdinand S. Tinio, Annotation, *Presumption Of Legitimacy Of Child Born After Annulment, Divorce Or Separation*, 46 ALR3d 158 (1972).
- Annotation, *Court's Power As To Custody And Visitation Of Children In Marriage Annulment Proceedings*, 63 ALR2d 1008 (1959).
- Annotation, *Court's Power As To Support And Maintenance Of Children In Marriage Annulment Proceedings*, 63 ALR2d 1029 (1959).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).

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# Rights of Unmarried Fathers in Paternity Actions

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*A Guide to Resources in the Law Library*

**SCOPE:** Bibliographic resources relating to parental rights and status of unmarried fathers in paternity actions.

**SEE ALSO:**

- [§ 26.6h Blood and DNA testing](#)
- [§ 26.6i Evidence](#)
- [§ 26.6j Defenses](#)

**DEFINITIONS:**

- "The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor." CONN. GEN. STAT. §45a-606 (2005)
- "Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, **his rights and responsibilities shall be equivalent to those of the mother**, including those rights defined under section 45a-606." CONN. GEN. STAT. §46b-172a(g) (2005) (emphasis added).
- "The notice to the putative father shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without good cause, a default judgment shall be entered.." CONN. GEN. STAT. § 46b-160(e)(2) (2005).

**STATUTES:**

- CONN. GEN. STAT. (2005)
  - § 45a-606. Father and mother joint guardians.
  - § 46b-61. Orders re children where parents live separately
  - § 46b-160. Petition by mother or expectant mother
  - § 46b-166. Testimony of putative father
  - § 46b-167. Evidence of putative father's good character admissible

- § 46b-168. Genetic testing when paternity is in dispute. Assessment of costs
- § 46b-172. Acknowledgment of paternity and agreement to support; judgment.
- § 46b-172a. Claim for paternity by putative father
- § 46b-215. Relatives obliged to furnish support, when. Orders.

## COURT RULES

- CONNECTICUT PRACTICE BOOK (2005 ed.).  
Chapter 25. **Superior Court - Procedure in Family Matters**  
§ 25-68. Right to counsel in State initiated paternity actions

## CASES:

### U.S. Supreme Court

- Stanley v. Illinois, 405 U.S. 645, 658, 92 S. Ct. 1208, 31 L.Ed. 2d 551 (1972). “The State of Illinois assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on parental fitness and without proof of neglect. Stanley’s claim in the state courts and here is that failure to afford him a hearing on his parental qualifications while extending it to other parents denied him equal protection of the laws. We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody.”
- Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed. 2d 297 (1979).
- Quilloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978).
- Lehr v. Robertson, 463 U.S. 248, 266-267, 103 S.Ct. 2985, 77 L.Ed. 2d 614 (1983). “the existence or nonexistence of a substantial relationship between parent and child is a relevant criterion in evaluating both the rights of the parent and the best interests of the child . . . . We therefore found that a Georgia statute that always required a mother’s consent to the adoption of a child born out of wedlock, but required the father’s consent only if he had legitimated the child, did not violate the Equal Protection Clause . . . . We have held that these statutes may not constitutionally be applied in that class of cases where the mother and father are in fact similarly situated with regard to their relationship with the child.”

### Connecticut

- Ashe v. Nixon, No. FA 05-4010683S (Conn. Super. Ct., J.D. New Haven at New Haven, Jun. 24, 2005). “Paternity actions by those claiming to be a child’s biological father are brought to the Probate Court. See General Statutes § 46b-172a. Sections 46b-56(b) and 46b-59 of the General Statutes, however, allow actions for visitation to be brought in the Superior Court. Under the recent case of *Roth v. Weston*, 259 Conn. 202 (2002), the Superior Court has limited power to grant visitation to non-parents against the wishes of the custodial parent. But Mr. Ashe claims to be the biological father of the minor child with whom he seeks visitation. If he proves that allegation by the requisite standard of proof, he has a right to seek visitation with the minor child, and any orders regarding visitation will be guided by the best interest of the minor child.”
- Weidenbacher v. Duclos, 234 Conn. 51, 661 A.2d 988 (1995).  
[See Table 3](#)
- Chaffee v. Cunningham, 4 C.S.C.R. 321at 321 (Judicial District, Hartford-New Britain at New Britain 1989). “This court feels that

similar to an action for dissolution of marriage, the defendant could file an answer and a cross-complaint setting forth his claims as to whether or not he is merely seeking visitation orders, custody orders and support orders in the paternity action.”

- Stevens v. Leone, 35 Conn. Supp. 237, 239-240, 406 A.2d 402 (1979). "It seems obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage."

#### **DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

#### **WEST KEY NUMBER:**

- Children out-of-wedlock  
# 20 Custody  
# 21-23 Support  
# 30-79 Paternity proceedings

#### **ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005)  
§ 92. Duty of putative father  
§ 100. Rights of father  
§ 101. — visitation
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).  
§ 38. Change of custody between parent. Father  
§ 39. \_\_\_\_\_. Visitation  
§ 42. Support, maintenance, and education. Father
- Robin Cheryl Miller, Annotation, *Right Of Putative Father To Visitation With Child Born Out Of Wedlock*, 58 ALR5th 669 (1998).
- Alan Stephens, *Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born*, 84 ALR4th 655 (1991).
- David M. Holliday, Annotation, *Paternity Proceedings: Right To Jury Trial*, 51 ALR4th 565 (1987).
- Russell G. Donaldson, Annotation, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 ALR4th 724 (1985).
- Kristine Cordier Karnezis, Annotation, *Right Of Indigent Defendant In Paternity Suit To Have Assistance Of Counsel At State Expense*, 4 ALR4th 363 (1981).
- Gary D. Spivey, Annotation, *Right Of Natural Parent To Withdraw Valid Consent To Adoption Of Child*, 74 ALR3d 421(1976).
- Thomas J. Goger, Annotation, *Rights Of Putative Fathers To Custody Of Illegitimate Child*, 45 ALR3d 216 (1972).
- Annotation, *Necessity Of Securing Consent Of Parents Of Illegitimate Child To Its Adoption*, 51 ALR2d 497 (1957).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).  
§§ 9-16. Defendant's case against paternity

#### **TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).

- § 42.2. Rights of Unmarried or Non-cohabiting Parents
- 5 SANDRA MORGAN LITTLE., CHILD CUSTODY & VISITATION LAW AND PRACTICE (2005).
  - Chapter 30 Rights of putative fathers to custody and visitation
    - § 30.02 The putative father's standing to seek custody of his child
    - § 30.03 Rights of the putative father vs. the natural mother or legal parent
    - § 30.04 Rights of the putative father vs. a non-parent
    - § 30.05 Rights of the putative father to visitation
    - § 30.06 Right of the putative father to have his child bear his name
- 2 VITEK. DISPUTED PATERNITY PROCEEDINGS (5th ed. 2005).
  - Chapter 27 "The rights of putative fathers," by A.F. Rosin et al.
    - § 27.02 The constitutional foundation
    - § 27.03 The constitutional implications of the protections of the rights of putative fathers and the extent of those rights in particular cases
      - [2] Paternity actions
- 1 ADOPTION LAW & PRACTICE (2004).
  - § 2.04[2] "Status of unwed fathers in adoption proceedings."
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 63. Paternity proceedings
    - § 63.01. Introduction
      - [1]. Nature and purpose of proceedings generally
        - [a]. Duty to support
        - [b]. Proceedings civil in nature
        - [c]. Constitutional considerations
        - [d]. legitimation

#### **LAW REVIEWS**

- Susan M. Zajac, Comment, *The Doctrine Of Family Integrity: Protecting The Parental Rights Of Unwed Fathers Who Have Substantial Relationships With Their Children*, 13 Conn. L. R. 145 (Fall 1980).
- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 CONNECTICUT LAW REVIEW 1 (1974).

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**Table 4 Nonfather's Parental Rights**

<b>Nonfather's Parental Rights</b>	
<b>CASES:</b>	<ul style="list-style-type: none"> <li>• <u>W. v. W.</u>, 248 Conn. 487, 495, 728 A.2d 1076 (1999). “The second issue on appeal is whether the trial court acted improperly when it equitably estopped the defendant from denying that he is the father of the plaintiff’s older child. We conclude that the trial court’s action was proper.”</li> <li>• <u>Temple v. Meyer</u>, 208 Conn. 404, 410, 544 A.2d 629 (1988). “Even if the plaintiff had demonstrated that the had been Timothy’s psychological parent, such a finding would not demonstrate that visitation continued to be in the best interest of the child.”</li> </ul>
<b>ENCYCLOPEDIAS:</b>	<ul style="list-style-type: none"> <li>• Alan Stephens, <i>Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born</i>, 84 ALR4th 655 (1991).</li> </ul>
<b>TEXTS &amp; TREATISES:</b>	<ul style="list-style-type: none"> <li>• 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000). § 42.2. Rights of unmarried or non-cohabiting parents</li> </ul>



**Table 5 Opening a Paternity Judgment**

<h2 style="text-align: center;">Opening a Paternity Judgment</h2>	
<p><u>State v. Dansby</u>, No. FA 89-92582 (Jun. 24, 2005)</p>	<p>“There is no statute or practice book dedicated to the opening of a paternity judgment, therefore the provisions of Conn. Gen. Stat. § 52-212a and Practice Book § 17-4, relating to the opening of a civil judgment apply. Each provides that a judgment may be opened within four months of the entrance of the judgment, absent fraud, duress, or mistake. The paternity acknowledgment statute, Conn. Gen. Stat. § 46b-172, similarly provides that a voluntary judgment may be opened after the statutory rescission period (60 days), only upon the basis of fraud, duress or material mistake. However, the acknowledgment statute specifically adds the language that material mistake of fact ‘may include evidence that he is not the father, with the burden of proof upon the challenger.’ Conn. Gen. Stat. § 46b-172(a)(2). Therefore, in the context of opening a voluntary judgment of paternity, evidence of non-paternity may form the basis of a claim of material mistake of fact.”</p>
<p><u>Barss v. Harrelle</u>, No. KNO FA-0129832 S (Conn. Super. Ct. J.D. New London at Norwich, Nov. 25, 2005).</p>	<p>“The Rhode Island acknowledgement was authorized under R.I. Gen. Laws 15-8-3, which provides in relevant part that ‘a man is presumed to be the natural father of a child if . . . a sworn acknowledgement of paternity of a child born out of wedlock is signed by both parents . . . and is forwarded to the state registrar of vital records for the purpose of amending the birth certificate. The sworn acknowledgement becomes a conclusive presumption if there is no court challenge to this document within sixty (60) days of the signing of this acknowledgment. The only defenses which may be raised to the signing of this acknowledgement after the sixty (60) day period are fraud, duress, or mistake of fact.’ In <i>Pettinato v. Pettinato</i>, 582 A2d. 909 (R.I., 1990), Rhode Island’s supreme court held that the presumption created by this statute could not be overcome by a mother who introduced the results of genetic blood testing proving that her husband had not fathered the older of her two children. The parties had utilized the statutory acknowledgement process because this child had been born prior to their marriage. The court indicated its concern about a ‘. . . situation wherein a mother can tell a man that he is the father of the child . . . and then illegitimize the child . . . by attacking the presumption of paternity that she helped bring about . . .,’ and relied upon the principle of equitable estoppel in deeming the blood test results to be, in this context, irrelevant. Legal paternity had been previously and sufficiently established.</p> <p style="text-align: center;">Connecticut law requires the same conclusion.”</p>

# Section 2.4

## Rights of Mothers in Paternity Actions

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### *A Guide to Resources in the Law Library*

#### SCOPE:

Bibliographic resources relating to parental rights and status of unmarried mothers in paternity actions.

#### DEFINITIONS:

- “The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor.” CONN. GEN. STAT. § 45a-606 (2005)
- "Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, **his rights and responsibilities shall be equivalent to those of the mother**, including those rights defined under section 45a-606." CONN. GEN. STAT. § 46b-172a(g) (2005) (emphasis added).
- **Compelling disclosure:** “If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a decree of divorce or dissolution or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the Commissioner of Social Services, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the Superior Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.” CONN. GEN. STAT. § 46b-169(a) (2005).

#### STATUTES:

- CONN. GEN. STAT. (2005)
  - § 45a-606. Father and mother joint guardians.
  - § 46b-61. Orders re children where parents live separately
  - § 46b-160. Petition by mother or expectant mother
  - § 46b-169. Compelling disclosure of name of putative father. Institution of action
  - § 46b-215. Relatives obliged to furnish support, when. Orders.

#### COURT RULES

- CONNECTICUT PRACTICE BOOK (2005 Ed.)
  - Chapter 25 *Superior Court - Procedure in Family Matters*
  - § 25-68. Right to counsel in State initiated paternity actions

#### CASES:

- Temple v. Meyer, 208 Conn. 404, 410, 544 A.2d 629 (1988). "It seems

obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage."

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**WEST KEY  
NUMBER:**

- Children out-of-wedlock
  - # 20 Custody
  - # 21-23 Support
  - # 30-79 Paternity proceedings

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005)
  - § 98. Rights of mother, generally
  - § 99. —Loss of mother's right
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
  - § 34. Custody in general
  - § 35. Parent and nonparent
  - § 36. Change of custody between parents
  - § 37. Mother
- David M. Holliday, Annotation, *Paternity Proceedings: Right To Jury Trial*, 51 ALR4th 565 (1987).
- Annotation, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 ALR4th 724
- Annotation, *Right Of Natural Parent To Withdraw Valid Consent To Adoption Of Child*, 74 ALR3d 421
- Annotation, *Necessity Of Securing Consent Of Parents Of Illegitimate Child To Its Adoption*, 51 ALR2d 497 (1957).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).
  - Plaintiff's case for paternity
    - § 4. Generally
    - § 5. Mother's sexual intercourse with defendant
    - § 6. —Intercourse during period of child's conception
    - § 7. Absence of intercourse with other men
    - § 8. Child's biological affinity to defendant

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  - § 42.2. Rights of Unmarried or Non-cohabiting Parents
- 5 SANDRA MORGAN LITTLE., CHILD CUSTODY & VISITATION LAW AND PRACTICE (2005).
  - Chapter 30. Rights of putative fathers to custody and visitation
    - § 30.03 Rights of the putative father vs. the natural mother
- VITEK. DISPUTED PATERNITY PROCEEDINGS.
  - Chapter 27 "The rights of putative fathers," by A.F. Rosin et al.
    - § 27.02 The constitutional foundation
    - § 27.03 The constitutional implications of the protections of the rights of putative fathers and the extent of those rights in particular cases
- 1 ADOPTION LAW & PRACTICE (2004).

§ 2.04[2]. Status of unwed fathers in adoption proceedings

**PAMPHLETS:**

- Establishing Paternity: Questions and Answers for Dads  
<http://www.dss.state.ct.us/pubs/patdad.pdf>

**LAW REVIEWS:**

- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 CONNECTICUT LAW REVIEW 1 (1974).

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# Section 2.5

## Marital Presumption in Connecticut

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the presumption in Connecticut that a child born in wedlock is the legitimate child of mother and her husband

### **DEFINITION:**

- **Marital presumption:** "postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband." Weidenbacher v. Duclos, 234 Conn. 51, 68-69, 661 A.2d 988 (1995).
- **Rebuttable presumption:** "We have never held, however, that this presumption is irrebuttable and conclusive against a person claiming to be the biological father of the child. On the contrary, we have held that this presumption may be rebutted a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father." Ibid., p. 69.
- "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, **including one born to, or conceived by, a married woman but begotten by a man other than her husband**, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother." (emphasis added), CONN. GEN. STATS. § 46b-160(a) (2005).

### **STATUTES:**

- CONN. GEN. STATS. (2005).
  - Chapter 815j. Dissolution of marriage, legal separation and annulment
    - § 46b-61. Orders re children where parents live separately.
  - Commencement of proceedings
  - Chapter 815y. Paternity matters
    - § 46b-160. Petition by mother or expectant mother.
    - § 46b-172a. Claim for paternity by putative father

### **CASES:**

#### **United States Supreme Court**

- Michael H. v. Gerald D., 491 U.S. 110, 129, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989). "Where, however, the child is born into an extant marital family, the natural father's unique opportunity conflicts with the similarly unique opportunity of the husband of the marriage; and it is not unconstitutional for the State to give categorical preference to the latter."

#### **Connecticut**

- W. v. W., 248 Conn. 487, 495, 728 A.2d 1076 (1999). "The second issue on appeal is whether the trial court acted improperly when it equitably estopped the defendant from denying that he is the father of the plaintiff's older child. We conclude that the trial court's action was proper."
- Weidenbacher v. Duclos, 234 Conn. 51, 68-69, 661 A.2d 988 (1995). See

Table 2.

- Jack M. v. Kim D., 1 Conn. L. Rptr. 333, 334-335 (Judicial District, New Haven at Meriden 1990) 1990 WL 265960. “The court finds it is a fact that the petitioner knew from the date of birth that Kim and her husband believed that the husband was the father of the child and were representing at all times that he was the father of the child. The court finds that the child was never represented to be the child of the petitioner. The child believes the husband is her father and enjoys a traditional family life in a comfortable home owned by Kim and her husband. He has legitimized the child by marrying Kim D. and acknowledging paternity in the probate court . . . For the foregoing reasons, the court concludes that the petitioner is equitably estopped from pursuing this action and will not advance the petition by granting the petitioner's motions for testing.”
- Freda v. Freda, 39 Conn. Supp. 230, 232, 476 A.2d 153 (1984). “The finding of paternity in this case was the same as if the court had given its approval to an agreement submitted to the court. The litigation required for the application of collateral estoppel was not present and the court may open its judgment if it is shown that fraud in obtaining it was present.”
- Schaffer v. Schaffer, 187 Conn. 224, 226, 445 A.2d 589 (1982). “Although the trial court did not specify the nature of the plaintiff's burden, it is clear that in Connecticut there is a presumption that a child born during lawful wedlock is the child of the husband, which presumption may be rebutted only by clear, convincing, and satisfactory proof that the child is illegitimate.”
- Stevens v. Leone, 35 Conn. Sup. 237, 240, 406 A.2d 402 (1979). “The court concludes that in view of the legislative history resulting in the present § 46b-61 of the General Statutes, the father of an illegitimate child need no longer be limited to bringing a petition for a writ of habeas corpus to invoke the jurisdiction of the Superior Court in a question regarding custody. It is clear that it was the intent of the legislature to permit an illegitimate father to institute a cause of action regarding custody under the authority of § 46b-61, as was done in the present case.”

**WEST KEY  
NUMBERS:**

- *Children Out-Of-Wedlock*  
#3. Evidence. Presumption of legitimacy

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**ENCYCLOPEDIAS:**

- 41 AM. JUR. 2d *Illegitimate Children* (2005).  
Presumptions of legitimacy and paternity  
§§ 15-22. In general  
§§ 23-39. Rebutting presumption from birth in wedlock
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).  
§ 14. Birth in wedlock  
§§ 30-33. Repudiation of legitimacy or presumed paternity
- *Proof Of Husband's Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 14 POF2d 409 (1977).
- Alan Stephens, *Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born*, 84 ALR4th 655 (1991).
- Donald M. Zupanec, *Who May Dispute Presumption Of Legitimacy Of Child Conceived Or Born During Wedlock*, 90 ALR3d 1032 (1979).

- James O. Peterson, *Proof Of Husband's Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 84 ALR3d 495 (1978).
- Ferdinand S. Tinio, *Presumption Of Legitimacy Of Child Born After Annulment, Divorce, Or Separation*, 46 ALR3d 158 (1972).

**TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  - § 38.9. Illegitimate children—presumption of paternity
  - § 42.2. Rights of unmarried or non-cohabiting parents
- ROBERT H. FOLSOM AND GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2005).
  - Chapter 3. Guardianships
    - § 3:6. Status of illegitimate children
- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).
  - § 1.05. Presumption of legitimacy
    - [1]. In general
    - [2]. Reason for presumption
    - [3]. Nature of presumption and evidentiary standard to overcome presumption
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 63. Paternity proceedings
    - § 63.02. Preliminary considerations
      - [5]. Presumption of legitimacy
        - [a]. Rebuttable presumption of legitimacy
        - [b]. Effects of divorce on presumption of legitimacy
        - [c]. Irrebuttable presumption of legitimacy

**LAW REVIEWS:**

- Traci Dallas, Notes, *Rebutting the Marital Presumption: A Developed Relationship Test*, 88 COLUMBIA LAW REVIEW 369 (1988).
- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 CONNECTICUT LAW REVIEW 1 (1974).

**COMPILER:**

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**Table 6 Weidenbacher v. Duclos**

<b>Weidenbacher v. Duclos</b>	
Definition	a "presumption of legitimacy," . . . postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband. <u>Weidenbacher v. Duclos</u> , 234 Conn. 51, 68-69, 661 A.2d 988 (1995)
Rebuttable	" . . .we have held that this presumption may be rebutted by a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father . . . . Indeed, we have not limited or restricted in any way the class of persons who may present such proof and thereby overcome the presumption." Ibid, p. 69.
Not A Per Se Bar	"In sum, there is no persuasive reason today to deny the putative father of a child born in wedlock the opportunity to rebut the presumption of legitimacy. Accordingly, we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child." Ibid., pp. 73-74.
Standing	"In deciding whether the putative father has standing, the trial court, on the basis of all the evidence before it, must determine whether the putative father has established that his interests and the best interests of the child outweigh those of the marital family unit." Ibid., pp. 76-77
Twofold Task	"In accordance with our precedents, the petitioner has a twofold task ahead. First, he must prove, by clear and convincing evidence, that he is the biological father . . . . Second, the petitioner must prove to the trial court that it is in the best interests of . . . [the child] that he be awarded custody or visitation. Ibid., p.78



## Section 2.6

# Proceedings to Establish Paternity

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*A Guide to Resources in the Law Library*

- “In this State there are only three ways of legally establishing paternity: (1) the marital presumption if the mother and the putative father are married to each other; (2) adjudication of paternity by a court of competent jurisdiction; or (3) a formal acknowledgment of paternity in accordance with the acknowledgment statute.” Hjarne v. Martin, No. FA00-0631333 (Conn. Super. Ct., J.D. Hartford, Apr. 21, 2002).
- “Although paternity actions may have ‘quasi-criminal’ overtones; Little v. Streater, 452 U.S. 1, 10, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981); they are civil actions to which the general rules governing civil actions apply.” Green v. Green, 39 Conn. Supp. 325, 326, 464 A.2d 72 (1983).
- “A paternity action results in a finding of ‘guilt’ or ‘innocence,’ and nonpayment of support orders attendant to a finding of ‘guilt’ may lead to contempt and imprisonment. General Statutes §§ 46b-171, 46b-215, 53-304. Nonetheless, the plaintiff in a paternity proceeding need only prove her case by a fair preponderance of the evidence. Lavertue v. Niman, 196 Conn. 403, 407, 493 A.2d 213, (Conn. 1985).
- “Historically, the action was criminal in form but civil in nature. It is fundamental, however, that the rules governing civil actions apply.” Kuser v. Orkis, 169 Conn. 66, 71, 362 A.2d 943 (1975).

# Section 2.6a

## Jurisdiction

*A Guide to Resources in the Law Library*

### **SCOPE:**

- Bibliographic resources relating to jurisdiction in paternity matters.

### **DEFINITIONS:**

#### **Putative father**

- "Any person claiming to be the father of a child born out of wedlock may at any time but no later than sixty days after the date of notice under section 45a-716 [hearing on petition to terminate parental rights], file a claim for paternity with the court of probate for the district in which either the mother or the child resides, on forms provided by such court." CONN. GEN. STAT. § 46b-172a(a) (2005)
- "By filing a claim under this section, the putative father submits to the jurisdiction of the court of probate." CONN. GEN. STAT. § 46b-172a(f) (2005)

#### **Mother or expectant mother**

- " Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother..." CONN. GEN. STAT. § 46b-160(a) (2005).
- " If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made. " CONN. GEN. STAT. § 46b-160(b) (2005).
- " In any proceeding to establish paternity, the court or family support magistrate may exercise personal jurisdiction over a nonresident putative father if the court or magistrate finds that the putative father was personally served in this state or that the putative father resided in this state and while residing in this state (1) paid prenatal expenses for the mother and support for the child, (2) resided with the child and held himself out as the father of the child, or (3) paid support for the child and held himself out as the father of the child, provided the nonresident putative father has received actual notice of the pending petition for paternity pursuant to subsection (c) of this section." CONN. GEN. STAT. § 46b-160(c) (2005).

### **STATUTES:**

- CONN. GEN. STAT. (2005)
  - Chapter 815y. Paternity Matters
    - § 46b-160. Petition by mother or expectant mother.
    - § 46b-161. Procedure in action brought by expectant mother
    - § 46b-162. Action by state or town
    - § 46b-163. Action not defeated by stillbirth or other premature termination of pregnancy

§ 46b-172a. Claim for paternity by putative father.

**FORMS:**

- Judicial Forms  
JD-CL-30. Cover sheet for agreement to support or acknowledgement of paternity (uncontested)  
JD-CL-31. Cover sheet for enforcement action in family support matters and petition for support  
JD-FM-4. Mittimus—Family Support Matters
- 2 CONN. PRACTICE BOOK (1997).  
Form 504.6. Petition for paternity proceeding by mother  
Form 504.7. Petition for paternity proceeding by state or town  
Form 505.2. Plea in paternity  
Form 508.2. Mittimus—Paternity

**WEST KEY NUMBERS:**

- Children out-of-wedlock  
#36. Jurisdiction

**DIGESTS:**

- DOWLING'S DIGEST: *Paternity* § 1
- CONNECTICUT FAMILY LAW CITATIONS: Paternity

**COURT CASES**

- W. v. W., 256 Conn. 657, 666, 779 A2d 716 (2001). "Furthermore, even if it is the biological father who has been located at the address discovered by the plaintiff, this court does not have jurisdiction over him. He lives in Massachusetts. It is not alleged that he has ever been in Connecticut, that he has ever been married to the plaintiff, that he knows he is the father of the child, or that he has been served with any notice of these proceedings. As a result, this court cannot bring this individual before us pursuant to General Statutes §§ 46b-44 and 46b-46 in order to resolve the issue of support. Therefore, we conclude that the trial court did not abuse its discretion in applying the doctrine of equitable estoppel in this case."
- Weidenbacher v. Duclos, 234 Conn. 51, 661 A.2d 988 (1995).
- Shannon L. v. Richard W., 12 Conn. L. Rptr. 403 at 403 (Litchfield 1994), 1994 WL 506410. "Moreover, this court has already addressed, and denied, the defendant's argument that a paternity action under General Statutes § 46b-160 does not survive the death of the putative father."
- Roberts v. Greaves, 1 C.S.C.R. 589 at 589 (Hartford 1986). "'Therefore, jurisdiction to determine paternity is implicit whenever there is jurisdiction to determine paternity support. That is the accepted view in this state and the prevailing view in the majority of jurisdictions that have considered this issue.'"
- Hayes v. Smith, 194 Conn. 52, 58, 480 A.2d 425 (1984). "An examination of 46b-160 demonstrates that the paternity action must be instituted by service of a verified petition, summons and order upon the putative father himself."
- Collins v. Scholz, 34 Conn. Sup. 501, 506, 373 A.2d 200 (1976). "The court's conclusion that the defendant did not reside or have his usual place of abode at the Fairfield address necessarily led to the conclusion that the attempted abode service made at that address was invalid and that the court had no jurisdiction over the person of the defendant. Accordingly, the court had to dismiss the action for lack of jurisdiction."
- Kuser v. Orkis, 169 Conn. 66, 72, 362 A.2d 943 (1975). "In the present case, personal jurisdiction over the defendant was obtained when he was

served with a true and attested copy of the writ, summons and complaint. This service of process gave the court in personam jurisdiction and was valid for that purpose regardless of any irregularity or deficiency in the body arrest of the defendant for security purposes, which procedure was not necessary to establish jurisdiction."

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005)
  - § 47. Jurisdiction and venue
  - § 48. \_\_\_\_ . Right of nonresident mother to maintain action
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
  - § 83. Jurisdiction
- James O. Pearson, Annotation, *Long-Arm Statutes: Obtaining Jurisdiction Over Nonresident Parent In Filiation Or Support Proceeding*, 76 ALR3d 708 (1977).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).
  - § 19. Jurisdiction and venue

**TEXTS & TREATISES:**

- RALPH H. FOLSOM AND GAYLE B. WILHELM, *PROBATE JURISDICTION AND PROCEDURE IN CONNECTICUT* 2D (2004).
  - § 2:32. Probate court jurisdiction over paternity proceedings
- 1 NINA M. VITEK, *DISPUTED PATERNITY PROCEEDINGS* (2005).
  - § 2.03. Jurisdiction and venue
  - § 4.06. Personal service of summons upon the respondent
  - § 4.07. Long-Arm jurisdiction
  - § 4.09. Subject matter jurisdiction
- 6 ARNOLD H. RUTKIN, *FAMILY LAW AND PRACTICE* (2005).
  - Chapter 63. Paternity proceedings
    - § 63.02. Preliminary considerations
      - [2]. Jurisdiction and venue over the defendant
        - [a]. Subject matter jurisdiction
        - [b]. *In Personam* jurisdiction
          - [i]. Long-arm jurisdiction
          - [ii]. Minimum contacts

**COMPILER:**

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## Section 2.6b

# Venue

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*A Guide to Resources in the Law Library*

### SCOPE:

- Bibliographic resources relating to venue in paternity matters.

### TREATED ELSEWHERE: DEFINITION:

- [§ 26.6a Jurisdiction](#)
- **Father:** "Any person claiming to be the father of a child born out of wedlock may at any time but no later than sixty days after the date of notice under section 45a-716 [hearing on petition to terminate parental rights], file a claim for paternity with the court of probate for the district in which either the mother or the child resides, on forms provided by such court." CONN. GEN. STAT. § 46b-172a(a) (2005)
- **Mother or Expectant Mother:** "The verified petition, summons and order shall be filed in the superior court for the judicial district in which either she or the putative father resides, except that in IV-D support cases, as defined in subdivision (13) of subsection (b) of section 46b-231 and in petitions brought under sections 46b-212 to 46b-213v, inclusive, such petition shall be filed with the clerk for the Family Support Magistrate Division serving the judicial district where either she or the putative father resides." CONN. GEN. STAT. § 46b-160(a) (2005).

### STATUTES:

- CONN. GEN. STAT. (2005)
  - Chapter 815y. Paternity Matters
    - § 46b-160. Petition by mother or expectant mother.
    - § 46b-161. Procedure in action brought by expectant mother
    - § 46b-162. Action by state or town
    - § 46b-163. Action not defeated by stillbirth or other premature termination of pregnancy
    - § 46b-172a. Claim for paternity by putative father.

### FORMS:

- Judicial Forms
  - JD-CL-30. Cover sheet for agreement to support or acknowledgement of paternity (uncontested)
  - JD-CL-31. Cover sheet for enforcement action in family support matters and petition for support
  - JD-FM-4. Mittimus—Family Support Matters
- 2 CONN. PRACTICE BOOK (1997).
  - Form 504.6. Petition for paternity proceeding by mother
  - Form 504.7. Petition for paternity proceeding by state or town
  - Form 505.2. Plea in paternity
  - Form 508.2. Mittimus—Paternity

### WEST KEY NUMBERS:

- *Children Out-Of-Wedlock*
  - # 37. Venue

**DIGESTS:**

- DOWLING'S DIGEST: *Paternity* § 1
- CONNECTICUT FAMILY LAW CITATIONS: Paternity

**COURT CASES**

- Hayes v. Smith, 194 Conn. 52, 59, 480 A.2d 425 (1984). "Moreover, 46b-160 provides that the verified petition which may be brought by either 'the mother or expectant mother' shall be filed in the Superior Court for the geographical area in which either 'she or the putative father resides.' (Emphasis added.)"

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).  
§ 47. Jurisdiction and venue  
§ 48. \_\_\_\_ . Right of nonresident mother to maintain action
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).  
§ 84. Venue
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).  
§ 19. Jurisdiction and venue

**TEXTS & TREATISES:**

- RALPH H. FOLSOM AND GAYLE B. WILHELM, *PROBATE JURISDICTION AND PROCEDURE IN CONNECTICUT* 2D (2004).  
§ 2:32. Probate court jurisdiction over paternity proceedings
- 1 NINA M. VITEK, *DISPUTED PATERNITY PROCEEDINGS* (2005).  
§ 2.03. Jurisdiction and venue  
§ 4.08. Venue
- ARNOLD H. RUTKIN, *FAMILY LAW AND PRACTICE* (2000).  
Chapter 63. Paternity proceedings  
§ 63.02. Preliminary considerations  
[2]. Jurisdiction and venue over the defendant

**COMPILER:**

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## Section 2.6c

# Petition by Mother or Expectant Mother

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the petition for paternity by mother or expectant mother.

### **STATUTES:**

- CONN. GEN. STATS. (2005).  
Chapter 815y. Paternity matters  
§ 46b-160. Petition by mother or expectant mother. Venue. Continuance of case. Evidence. Jurisdiction over nonresident putative father. Personal service. Petition to include answer form, notice and application for appointment of counsel. Genetic tests. Default judgment, when  
§ 46b-161. Procedure in action brought by expectant mother

### **FORMS:**

- Connecticut Practice Book (1997).  
Form 504.6 Petition for Paternity Proceeding by Mother

### **CASES:**

- Lach v. Welch, 9 CSCR 701 (Judicial District, Litchfield, 1994), 1994 WL 271518. "Since our Supreme court decided Hayes, a court faced with the question of paternity is no longer dependent upon fallible testimony: through ... advancements in genetic testing, science has virtually eliminated the 'proof problem' by developing an effective means to prove the identity of an illegitimate child's father in the absence of the father."
- Hayes v. Smith, 194 Conn. 52, 60-61, 480 A.2d 425 (1984). "Although the plaintiff can point to nothing in the statutory scheme of 46b-160 that belies the plain legislative intent that 46b-160 requires that a paternity action must be instituted during the lifetime of the putative father, she seems to argue, recognizing that the action must be instituted by verified petition, that the balance of the statute is procedural and not substantive. The plaintiff claims that while the 'procedural method' might be 'flawed' by the death of the putative father, that will not destroy the action. To support this claim, she argues that the 1978 amendment to 45-274 'enlarged' the means of establishing paternity to include in rem proceedings against the estate of the deceased 'father' and that the issue of paternity does not fall within the exception to the general survival statute in 52-599. We do not agree."
- Moore v. McNamara, 201 Conn. 16, 33-34, 513 A.2d 660 (1986). "Nevertheless, even were we to find the defendant's interpretation of the statute reasonable, the fact that 46b-168 allows the court to order blood tests on motion of any party would render futile a decision not to apply the test results to the defendant. At the next trial, the plaintiff would be able to move for a further round of blood tests, and then to have the results admitted into evidence. Therefore, the court did not err in applying the results of the HLA

and blood grouping tests to this defendant.”

- Delgado v. Martinez, 25 Conn. App. 155, 159, 593 A.2d 518 (1991).  
“Accordingly, we hold that the statute of limitations enunciated in General Statutes 46b-172 (a) is not enforceable against a party who has not validly waived his procedural due process rights and where a judgment of paternity has been entered without notice and an opportunity to be heard.”

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).

**TEXTS &  
TREATISES:**

- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).  
§ 2.05. Pretrial proceedings  
[1]. Elements of petition  
§ 4.05. Verification of the petition
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).  
Chapter 63. Paternity proceedings  
§ 63.3. Initial procedures in the Paternity action  
[1]. Form and sufficiency of complaint or petition  
[a]. FORM: Complaint to determine paternity  
[b]. Drafting petition or complaint

**COMPILER:**

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# Section 2.6d

## Claim for Paternity by Father

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*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to claim for paternity by putative father.

**SEE ALSO:**

- [§ 4. Rights of unmarried father in paternity actions](#)

**STATUTES:**

- CONN. GEN. STATS. (2005).  
Chapter 815y. Paternity matters  
§ 46b-172a. Claim for paternity by putative father. Hearing. Three-judge court. Rights and responsibilities upon adjudication or acknowledgement of paternity. Claim for paternity after death of putative father

**FORMS:**

- Acknowledgment of Paternity (Non-IV-D), JD-FM-145
- Paternity Petition (Non-IV-D), JD-FM-146
- 2 CONNECTICUT PRACTICE BOOK (1997).  
Form 504.6 Petition for Paternity Proceeding by Mother  
Form 504.7 Petition for Paternity by State or Town  
Form 505.2 Plea in Paternity

**CASES:**

- Ashe v. Nixson, No. FA 05-4010683S (Conn. Super. Ct., J.D. New Haven at New Haven, Jun. 24, 2005). "Paternity actions by those claiming to be a child's biological father are brought to the Probate Court. See General Statutes § 46b-172a. Sections 46b-56(b) and 46b-59 of the General Statutes, however, allow actions for visitation to be brought in the Superior Court. Under the recent case of *Roth v. Weston*, 259 Conn. 202 (2002), the Superior Court has limited power to grant visitation to non-parents against the wishes of the custodial parent. But Mr. Ashe claims to be the biological father of the minor child with whom he seeks visitation. If he proves that allegation by the requisite standard of proof, he has a right to seek visitation with the minor child, and any orders regarding visitation will be guided by the best interest of the minor child."
- Weidenbacker v. Duclos, 234 Conn. 51 (1995) "This appeal raises an issue of first impression for this court: Whether a man who alleges that he is the biological father of a minor child has standing to establish his paternity when the mother, at the time of the child's birth, was married to another man."
- Lach v. Welch, 9 CSCR 701 (Judicial District, Litchfield, 1994), 1994 WL 271518. "Since our Supreme court decided Hayes, a court faced with the question of paternity is no longer dependent upon fallible testimony: through ... advancements in genetic testing, science has virtually eliminated the 'proof problem' by developing an effective means to prove the identity of an

illegitimate child's father in the absence of the father."

- Hayes v. Smith, 194 Conn. 52, 60-61, 480 A.2d 425 (1984). "Although the plaintiff can point to nothing in the statutory scheme of 46b-160 that belies the plain legislative intent that 46b-160 requires that a paternity action must be instituted during the lifetime of the putative father, she seems to argue, recognizing that the action must be instituted by verified petition, that the balance of the statute is procedural and not substantive. The plaintiff claims that while the 'procedural method' might be 'flawed' by the death of the putative father, that will not destroy the action. To support this claim, she argues that the 1978 amendment to 45-274 'enlarged' the means of establishing paternity to include in rem proceedings against the estate of the deceased 'father' and that the issue of paternity does not fall within the exception to the general survival statute in 52-599. We do not agree."
- Moore v. McNamara, 201 Conn. 16, 33-34, 513 A.2d 660 (1986). "Nevertheless, even were we to find the defendant's interpretation of the statute reasonable, the fact that 46b-168 allows the court to order blood tests on motion of any party would render futile a decision not to apply the test results to the defendant. At the next trial, the plaintiff would be able to move for a further round of blood tests, and then to have the results admitted into evidence. Therefore, the court did not err in applying the results of the HLA and blood grouping tests to this defendant."
- Delgado v. Martinez, 25 Conn. App. 155, 159, 593 A.2d 518 (1991). "Accordingly, we hold that the statute of limitations enunciated in General Statutes 46b-172 (a) is not enforceable against a party who has not validly waived his procedural due process rights and where a judgment of paternity has been entered without notice and an opportunity to be heard."

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).

**TEXTS &  
TREATISES:**

- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).
  - § 2.05. Pretrial proceedings
    - [1]. Elements of petition
  - § 4.05. Verification of the petition
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 63. Paternity proceedings
    - § 63.3. Initial procedures in the Paternity action
      - [1]. Form and sufficiency of complaint or petition
        - [a]. FORM: Complaint to determine paternity
        - [b]. Drafting petition or complaint

**COMPILER:**

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## Section 2.6e

# Parties and Standing

*A Guide to Resources in the Law Library*

### **SCOPE:**

- Bibliographic resources relating to parties and standing in paternity actions

### **SEE ALSO:**

- Table 7: Paternity action by state or town
- Table 8: Paternity action by child

### **DEFINITION:**

- **Attorney General:** "In cases involving public assistance recipients the petition shall also be served upon the Attorney General who shall be and remain a party to any paternity proceeding and to any proceedings after judgment in such action." CONN. GEN. STAT. §46b-160(a) (2005).
- **Cease to be a party:** "Failing perfection of parental rights as prescribed by this section, any person claiming to be the father of a child born out of wedlock (1) who has not been adjudicated the father of such child by a court of competent jurisdiction, or (2) who has not acknowledged in writing that he is the father of such child, or (3) who has not contributed regularly to the support of such child or (4) whose name does not appear on the birth certificate shall cease to be a legal party in interest in any proceeding concerning the custody or welfare of the child, including but not limited to guardianship and adoption, unless he has shown a reasonable degree of interest, concern or responsibility for the child's welfare." CONN. GEN. STAT. § 46b-172a(h) (2005).

### **STATUTES:**

- CONN. GEN. STAT. (2005)
  - Chapter 815y. Paternity Matters
    - § 46b-160. Petition by mother or expectant mother.
    - § 46b-161. Procedure in action brought by expectant mother
    - § 46b-162. Action by state or town. Table 7
    - § 46b-163. Action not defeated by stillbirth or other premature termination of pregnancy
    - § 46b-172a. Claim for paternity by putative father

### **WEST KEY NUMBERS:**

- *Children Out-Of-Wedlock*
  - #34. Who may maintain proceedings
  - #35. Persons liable

### **COURT CASES**

- Weidenbacher v. Duclos, 234 Conn. 51, 76, 661 A.2d 988 (1995).  
"Accordingly, we conclude that a man's mere assertion that he is the biological father, without more, is insufficient to confer standing to challenge the paternity of a child born in wedlock. Rather, we hold that a putative father of such a child must offer proof, at a preliminary evidentiary hearing devoted to standing, that he is entitled to set in motion the judicial machinery to determine whether he is the biological father of the child."

- Andrews-White v. Mitchell, 15 Conn. L. Rptr. 629 at 629-30 (Hartford 1995), 1995 WL 684779. “The defendant accurately notes the statutory limits as to who may initiate paternity actions; C.G.S. § 46b-160 (mother or expectant money); C.G.S. § 46b-162 (action by state or town) and C.G.S. § 46b-172a [claim for paternity by putative father]. The statutory scheme is devoid of reference to an action by a child or her guardian. This is a disturbing scenario when one considers that it is the child's interest which is at stake; as it is the child who has the primary interest in establishing a relationship to its father. Pickett v. Brown, 462 U.S. 1, 16 n.15 (1983).

This Court for the reasons set forth below, finds that the child's interest in establishing paternity is a fundamental state and federal constitutional liberty interest of the child. The common law recognizes this right and the judicial system must afford the child an opportunity to exercise and protect her interest.”

- Shannon L. v. Richard W., 12 Conn. L. Rptr. 403 at 403 (Litchfield 1994), 1994 WL 506410. “Moreover, this court has already addressed, and denied, the defendant's argument that a paternity action under General Statutes § 46b-160 does not survive the death of the putative father.”

#### **DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

#### **ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
- George L. Blum, Annotation, *Right Of Illegitimate Child To Maintain Action To Determine Paternity*, 86 ALR5th 637 (2001).

#### **TEXTS & TREATISES:**

- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).
  - § 1.04. Types of proceedings and parties
    - [3] Parties who may sue
    - [4] Necessary parties
  - § 2.05. Pretrial proceedings
    - [2]. Parties and standing
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).
  - Chapter 63. Paternity proceedings
    - § 63.02. Preliminary considerations
      - [4]. Parties in the paternity proceeding
        - [a]. Who may maintain the action
          - [i]. The child
          - [ii]. Mother/pregnant woman
          - [iii]. Biological and resumed fathers
          - [iv]. Public agencies
          - [v]. Persons providing support for the child or other interested parties
        - [b]. Necessary parties/joiner

#### **LAW REVIEWS:**

- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 CONNECTICUT LAW REVIEW 1 (1974).

#### **COMPILER:**

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT

**Table 7 Paternity Action by State or Town**

<b>Paternity Action by State or Town</b>	
STATUTE:	" The state or any town interested in the support of a child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the Commissioner of Social Services or the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition. " CONN. GEN. STAT. § 46b-162 (2005).
FORM:	<ul style="list-style-type: none"> <li>2 CONN. PRACTICE BOOK (1997). Form 504.7. Petition for Paternity Proceeding by State or Town</li> </ul>
CASES:	<ul style="list-style-type: none"> <li>"In appearing on behalf of the state in this action, the attorney general was exercising this right given by § 52-440a [now 46b-162]." <u>Cross v. Wilson</u>, 35 Conn. Supp. 628, 403 A.2d 1103 (1978).</li> </ul>

**Table 8 Paternity Actions by Child**

<b>Paternity Action by Child</b>	
CONN. GEN. STAT. § 46b-55(b) (2005)	"If any child born during a marriage, which is terminated by a divorce decree or decree of dissolution of marriage, is found not to be issue of such marriage, the child or his representative may bring an action in the Superior Court to establish the paternity of the child within one year after the date of the judgment of divorce or decree of dissolution of the marriage of his natural mother, notwithstanding the provisions of section 46b-160.

# Section 2.6f

## Notice

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### *A Guide to Resources in the Law Library*

#### **SCOPE:**

- Bibliographic resources relating to notice and service of notice in paternity actions in Connecticut

#### **SEE ALSO:**

- [§ 26.3 Rights of unmarried fathers in paternity actions](#)

#### **DEFINITION:**

- **Summons:** “The court or any judge, or family support magistrate, assigned to said court shall cause a summons, signed by such judge or magistrate, by the clerk of said court, or by a commissioner of the Superior Court to be issued, requiring the putative father to appear in court at a time and place as determined by the clerk but not more than ninety days after the issuance of the summons to show cause why the request for relief in such petition should not be granted.” CONN. GEN. STAT. §46b-160(a) (2005).
- **Actual notice:** “If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made.” CONN. GEN. STAT. § 46b-160(b) (2005).
- **Notice to the putative father:** “shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without good cause, a default judgment shall be entered.” CONN. GEN. STAT. § 46b-160(e)(2) (2005).

#### **STATUTES:**

- CONN. GEN. STAT. (2005)
  - Title 815y. Paternity Matters
    - § 46b-160. Petition by mother or expectant mother
    - § 46b-162. Action by state or town
    - § 46b-172a. Claim for paternity by putative father

#### **WEST KEY NUMBERS:**

- *Children Out-Of-Wedlock*
  - 36. Jurisdiction

#### **DIGESTS:**

- DOWLING’S DIGEST: *Paternity*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

### **COURT CASES**

- W. v. W., 256 Conn. 657, 666, \_\_\_ A2d \_\_\_(2001). “Furthermore, even if it is the biological father who has been located at the address discovered by the plaintiff, this court does not have jurisdiction over him. He lives in Massachusetts. It is not alleged that he has ever been in Connecticut, that he has ever been married to the plaintiff, that he knows he is the father of the child, or that he has been served with any notice of these proceedings. As a result, this court cannot bring this individual before us pursuant to General Statutes §§ 46b-44 and 46b-46 in order to resolve the issue of support.[fn4] Therefore, we conclude that the trial court did not abuse its discretion in applying the doctrine of equitable estoppel in this case.”
- Banks v. Evans, 6 Conn. App. 175, 178, 504 A.2d 522 (1986). “The entire record of this case also indicates that the notice to the defendant of the trial was reasonable under all the circumstances.”

### **ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).

### **TEXTS & TREATISES:**

- NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2000).  
Chapter 4. Conducting the paternity trial  
§ 4.06. Personal service of summons upon the respondent
- ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2000).  
Chapter 63. Paternity proceedings  
§ 63.03. Initial procedures in the paternity action  
[2]. Effecting service upon the defendant

### **COMPILER:**

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 9 Service and return of process

Service and Return of Process	
§ 46b-160(a)	“A state marshal, proper officer or investigator shall make due returns of process to the court not less than twenty-one days before the date assigned for hearing.”
§ 46b-160(a)	“In the case of a child or expectant mother being supported wholly or in part by the state, service of such petition may be made by any investigator employed by the Department of Social Services and any proper officer authorized by law.”
§ 46b-160(b)	“If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made.”

# Section 2.6g

## Hearing

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### *A Guide to Resources in the Law Library*

#### **SCOPE:**

- Bibliographic resources relating to the hearing in an action to establish paternity in Connecticut

#### **DEFINITION:**

- “Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother.” CONN. GEN. STAT. § 46b-160(a) (2005).
- **Default Judgement:** “The court or family support magistrate shall enter a default judgment against a nonresident putative father if such putative father (1) fails to answer or otherwise respond to the petition, or (2) fails to appear for a scheduled genetic test without good cause, provided a default judgment shall not be entered against a nonresident putative father unless (A) there is evidence that the nonresident putative father has received actual notice of the petition pursuant to subsection (c) of this section and (B) there is verification that the process served upon the putative father included the answer form, notice to the defendant and an application for appointment of counsel required by subsection (e) of this section. Upon entry of a default judgment, a copy of the judgment and a form for a motion to reopen shall be served upon the father in the same manner as provided in subsection (c) of this section.” CONN. GEN. STAT. §46b-160(g) (2005).
- **Three Judge Court (Probate):** “ Upon the motion of the putative father, the mother, or his or her counsel, or the judge of probate having jurisdiction over such application, filed not later than three days prior to any hearing scheduled on such claim, the Probate Court Administrator shall appoint a three-judge court from among the several judges of probate to hear such claim. Such three-judge court shall consist of at least one judge who is an attorney-at-law admitted to practice in this state. The judge of the court of probate having jurisdiction over such application under the provisions of this section shall be a member, provided such judge may disqualify himself in which case all three members of such court shall be appointed by the Probate Court Administrator. Such three-judge court when convened shall have all the powers and duties set forth under sections 17a-75 to 17a-83, inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, and 17a-615 to 17a-618, inclusive, and shall be subject to all of the provisions of law as if it were a single-judge court. The judges of such court shall designate a chief judge from among their members. All records for any case before the three-judge court shall be maintained in the court of probate having jurisdiction over the matter as if the three-judge court had not been appointed.” CONN. GEN. STAT. § 46b-172(e) (2005).



**STATUTES:**

- CONN. GEN. STAT. (2005)  
Chapter 815y. Paternity matters  
§ 46b-160. Petition by mother or expectant mother.  
§ 46b-172a. Claim for paternity by putative father. Hearing.

**WEST KEY NUMBERS:**

- *Children out-of-wedlock*  
# 56. Trial  
# 57. — In general  
# 59. — Questions for jury  
# 60. — Instructions  
# 61. — Verdict or findings  
# 62. New Trial

**DIGESTS:**

- DOWLING'S DIGEST: *Paternity*

**COURT CASES**

- Melanson v. Rogers, 38 Conn. Sup. 484, 491, 451 A.2d 825 (1982). "A review of the trial judge's charge reveals that he correctly instructed the jury that the plaintiff has the burden of proving that the defendant is the father. Moreover, there is nothing in the charge which would indicate that the defendant had the burden of proving David Libby or anyone else was the real father. Thus, the instruction was not improper."

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).  
§§ 83-89. Trial, judgment, and order  
§ 83. Generally  
§ 84. Closed court  
§ 85. Right to jury trial  
§ 86. Presence of child in court  
§ 87. Instructions  
§ 88. Judgment or order, generally  
§ 89. Vacation or modification
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).

**TEXTS & TREATISES:**

- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).  
Chapter 2. Paternity proceedings  
§ 2.02. Civil nature of paternity proceedings  
[2]. Right to court appointed counsel  
[3]. Right to jury trial  
§ 2.05. Pretrial proceedings  
§ 2.06. Finality of judgment or order  
§ 2.07. Postjudgment proceedings  
Chapter 4. Conducting the paternity trial  
§ 4.11. Documents and records to be subpoenaed  
§ 4.13. Quantum of proof  
§ 4.14. Admissibility of blood tests  
§ 4.15. Exhibits  
§ 4.16. Examination of witnesses
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2000)  
§ 63.05. Settlement opportunities and trial  
§ 63.06. Orders and judgment  
[4]. Recovery of costs, prenatal, postnatal, and other expenses  
[5]. Attorney Fees

[6]. Selection of

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# Section 2.6h

## Blood & DNA Testing

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the admissibility of blood and genetic tests in paternity actions.

### **SEE ALSO:**

- [§ 26.6i Evidence](#)

### **DEFINITION:**

- “Courts have allowed the use of blood tests in paternity litigation for the last half century.” Moore v. McNamara, 201 Conn. 16, 26, 513 A.2d 660 (1986).
- **Order to submit to blood test:** “If the court or family support magistrate may exercise personal jurisdiction over the nonresident putative father pursuant to subsection (d) of this section and the answer form is returned and the putative father does not admit paternity, the court shall order the mother, the child and the putative father to submit to genetic tests. Such order shall be served upon the putative father in the same manner as provided in subsection (c) of this section. The genetic test of the putative father, unless he requests otherwise, shall be made in the state where the putative father resides at a location convenient to him. The costs of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if the putative father is subsequently adjudicated the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of the costs.” CONN. GEN. STAT. § 46b-160(f) (2005).
- **HLA blood test:** “One type of blood test, the human leukocyte antigen (HLA) tissue typing test, can determine paternity with a rate of 98 percent probability. Fingerprinting with deoxyribonucleic acid, or DNA, can positively identify a person's father . . . . Several Connecticut paternity cases have focused on the accuracy of these tests. See generally State v. Skipper, 228 Conn. 610, 637 A.2d 1101 (1994) (HLA and DNA tests); Miller v. Kirshner, 225 Conn. 185, 621 A.2d 1326 (1993) (HLA tests); Moore v. McNamara, 201 Conn. 16, 513 A.2d 660 (1986) (HLA tests). General Statutes § 46b-168 (a) allows a court or family support magistrate to order DNA tests when the paternity of a child is in issue.” Weidenbacher v. Duclos, 234 Conn. 51, 71, 661 A.2d 988 (1995) fn. 25.

### **STATUTES:**

- CONN. GEN. STATS. (2005).  
Chapter 815y. Paternity matters  
§ 46b-160. Petition by mother or expectant mother.  
§ 46b-168. *Genetic tests when paternity is in dispute. Assessment of costs*  
§ 46b-168a. *Genetic tests in IV-D support cases when paternity at issue. Assessment of costs. Regulations.*

### **REGULATIONS:**

- CONN. AGENCIES REGS. § 46b-168a-1. Genetic tests required by IV-D agencies (October 2000).

**FORMS:**

- “Motion—For blood test of putative father,” 5 AM JUR PLEADING & PRACTICE *Bastards* § 80 (1998).
- “Motion—For blood test of putative father—Another form,” 5 AM JUR PLEADING & PRACTICE *Bastards* § 80 (1998).
- “Motion for fee waiver and for orders for State to pay cost of DNA tests,” *Defending Yourself in a Paternity Case* (January 1996).
- “Motion for DNA Tests,” *Defending Yourself in a Paternity Case* (January 1996).

**RECORDS & BRIEFS:**

- [Motion for HLA Testing](#), CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS (April 1991), [Delgado v. Martinez](#).
- *Motion for Blood Test*, A-915 CONNECTICUT SUPREME COURT RECORDS AND BRIEFS (May 1986), [Moore v. McNamara](#).
- [Motion for Payment of Blood Tests](#), A-915 CONNECTICUT SUPREME COURT RECORDS AND BRIEFS (May 1986), [Moore v. McNamara](#).

**CASES:**

- [White v. Cordier](#), 2000 Ct. Sup. 6486, 6488 (Judicial District, No. FA94-0616380, May 30, 2000), 2000 WL 773006. “Where the court properly orders a DNA test and there is an allegation of requisite sexual contact between the parties it is admissible in evidence without further foundation or proof of authenticity or accuracy.”
- [In the Interest of Darlene C., a person under the age of eighteen years](#), 21 CONN. L. RPTR. 30, 31 (Middletown 1998), 1998 WL 867330. “His [child’s putative father’s] court appointed lawyer challenged the DCF motion for blood testing and, on February 16, 1994, this court (Foley, J.) sustained the objection on the ground that in juvenile proceedings where the motion for blood testing is not accompanied by a verified statement by the child’s mother, as is the custom in the usual paternity cases brought under Conn. Gen. Stat. § 46b-168, there must be a fact-based evidentiary hearing in order to satisfy due process before the blood testing can be ordered over the objection of the putative father.”
- [Weidenbacker v. Duclos](#), 234 Conn. 51, 71, 661 A.2d 988 (1995). “Furthermore, modern scientific tests can determine, with near perfect accuracy, who is the true biological father of a child.”
- [State v. Skipper](#), 228 Conn. 610, 611, 637 A.2d 1101 (1994). “The dispositive issue in this appeal is the admissibility of the probability of paternity statistic calculated from DNA evidence.”
- [Miller v. Kirshner](#), 225 Conn. 185, 197, 621 A.2d 1326 (1993). “We conclude that when the defendant consented to have his blood tested not simply to establish exclusion from paternity but also to calculate the likelihood of paternity, such consent encompassed HLA testing. Therefore, the defendant’s argument that his constitutional rights under the fourth and fifth amendments were violated because he did not consent to an HLA test is without merit.”
- [Lach v. Welch](#), judicial district of Litchfield, Docket No. FA93-0063955, 9 CSCR 701 (1994). “Since our Supreme court decided [Hayes](#), a court faced with the question of paternity is no longer dependent upon fallible testimony: through ... advancements in genetic testing, science has virtually eliminated the ‘proof problem’ by developing an effective means to prove the identity of an illegitimate child’s father in the absence of the father.”
- [In Re L.](#), 42 Conn. Sup. 562, 566-567, 632 A.2d 59 (1993). “This brings us to the interests of the movant. It is true that a parent has a fundamental right and interest in his family’s integrity . . . . The movant, however, is not asserting the rights of a parent in his motion. Rather, he merely avers that he

may be L.'s parent. That is his only linchpin on which to hang any claim of a right or an entitlement to compel L. to submit to a blood test. At best, such an uncertain assertion of a possible familial relation may entitle the movant to a judicial forum in which to resolve the uncertainty. See General Statutes § 52-29; Stevens v. Leone, 35 Conn. Sup. 237, 406 A.2d 402 (1979); L v. R, 518 S.W.2d 113 (Mo. App. 1974); Slawek v. Stroh, 62 Wis.2d 295, 303-307, 215 N.W.2d 9 (1974); see also In re Paternity of C.A.S., 161 Wis.2d 1015, 1027-32, 468 N.W.2d 719 (1991); cf. General Statutes § 46b-172a. Such an uncertain claim does not give rise to a special constitutional status. Entitlement to a blood test, as previously observed, is statutory and is discretionary with the court. Balancing L.'s constitutional right to bodily integrity against the movant's tentative and attenuated status, the former must obviously prevail.

- Barlow v. Guerrero, 9 Conn. App. 431, 432, 519 A.2d 623 (1987). "General Statutes 46b-168 provides that the court 'may' order blood tests upon motion by any party. Thus, the order is discretionary."
- Moore v. McNamara, 201 Conn. 16, 33-34, 513 A.2d 660 (1986). "Nevertheless, even were we to find the defendant's interpretation of the statute reasonable, the fact that 46b-168 allows the court to order blood tests on motion of any party would render futile a decision not to apply the test results to the defendant. At the next trial, the plaintiff would be able to move for a further round of blood tests, and then to have the results admitted into evidence. Therefore, the court did not err in applying the results of the HLA and blood grouping tests to this defendant."

**WEST KEY  
NUMBERS:**

- *Children out-of-wedlock*  
# 56. Trial  
# 57. — Blood Tests

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).  
§ 78. Blood tests
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
- Alan Stephens, Annotation, *Admissibility Or Compellability Of Blood Test To Establish Testee's Nonpaternity For Purpose Of Challenging Testee's Parental Rights*, 87 ALR4th 572 (1991).
- John P. Ludington, Annotation, *Admissibility And Weight Of Blood-Grouping Tests In Disputed Paternity Cases*, 43 ALR4th 579 (1986).
- Jean E. Maess, Annotation, *Admissibility, Weight And Sufficiency Of Human Leukocyte Antigen (HLA) Tissue Typing Tests In Paternity Cases*, 37 ALR4th 167 (1985).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).  
§ 24. Genetic and blood grouping tests  
§ 25. —Purposes for which tests may be used  
§ 26. —Paternity calculations  
§ 28. Burden and standard of proof  
§ 29. —Presumption based on paternity test results
- *Blood Typing*, 40 POF2d 1 (1984).  
§ 1.5. Comparison of blood typing to DNA evidence  
§§ 16-25. Proof of probability of paternity through blood testing

- *Proof Of Criminal Identity Or Paternity Through Polymerase Chain Reaction (PCR) Testing*, 36 POF3d 1 (1996).  
§§ 95-103. Proof of paternity from match of DNA fingerprints based on PCR and application of paternity probabilities

**PAMPHLETS:**

- Establishing Paternity: Questions and Answers for Dads  
<http://www.dss.state.ct.us/pubs/patdad.pdf>
- Establishing Paternity: Questions and Answers for Moms  
<http://www.dss.state.ct.us/pubs/patmom.pdf>

**TEXTS &  
TREATISES:**

- 1 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).  
Chapter 1. Overview of disputed paternity actions  
§ 1.06. Evidence to establish or disestablish paternity  
[b] Ordering blood tests  
Chapter 3. Evidentiary and related issues in paternity  
§ 3.07. DNA testing  
§ 3.08. Human Leukocyte Antigen (HLA) testing  
§ 3.09. Miscellaneous tests  
§ 3.12. Disposition of cases based on genetic testing  
Chapter 4. Conducting the paternity trial  
§ 4.14. Admissibility of blood tests  
Chapter 13. Scientific aspects of DNA testing  
Chapter 14. Admissibility of DNA testing in individual states  
§ 14.07. Connecticut
- 2 NINA M. VITEK, DISPUTED PATERNITY PROCEEDINGS (2005).  
Chapter 15. DNA Testimony  
Chapter 16. Determining paternity after death: genetic testing when a parent is not available
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).  
Chapter 63. Paternity proceedings  
§ 63.04. Pretrial procedures  
[2]. Blood tests  
[a]. HLA, blood group tests, and DNA tests  
[b]. Authority for ordering tests  
[c]. Refusal to submit to blood tests; sanctions  
[d]. Discovery and expert witnesses

**COMPILER:**

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**Figure 1 Motion for HLA Testing**

FA 89-043989

ROBERT DELGADO	:	SUPERIOR COURT:	:
	:	JUDICIAL DISTRICT OF	:
V.	:	HARTFORD/NEW BRITAIN	:
	:	AT NEW BRITAIN	:
EDWIN MARTINEZ	:	AUGUST 17, 1989	:

MOTION FOR HLA TESTING

Pursuant to Conn. Gen. Stats. § 46b-168, Article I, § § 8 and 10 of the Connecticut Constitution, and the Fourteenth Amendment of the United States Constitution, respondent respectfully moves this court to order HLA testing in this case, and to order that costs for such testing be paid by the State of Connecticut. Respondent understands that such costs will be assessed against him in the event that he is eventually adjudicated the father in this case. A financial affidavit accompanies this Motion.

THE RESPONDENT

By: \_\_\_\_\_

[Name]  
[Address]  
[Telephone]  
[Juris Number]

Counsel for Mr. Martinez

ORAL ARGUMENT REQUESTED

FAMILY SUPPORT MAGISTRATE

**Figure 2 Motion for payment of blood tests**

MOTION FOR PAYMENT OF BLOOD TESTS

The Defendant moves that the costs of blood tests for the Plaintiff, the minor child subject of this action and the Defendant be paid by the State as the Defendant is unemployed and indigent.

The Defendant also moves that said tests be ordered to be performed at the Hartford Hospital.

THE DEFENDANT

BY: [name]  
LAW OFFICES OF [name]  
[address]

Filed July 20, 1984

ORDER

The above and foregoing motion having been heard, it is hereby ORDERED: GRANTED.

BY THE COURT

\_\_\_\_\_, J.

Dated October 1, 1984



# Section 2.6i

## Evidence

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### *A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to evidence in an action to establish paternity.
- SEE ALSO:**
- [§ 26.h Blood tests](#)
- DEFINITION:**
- **Prima facie case:** “The plaintiff did not waver in her assertions that the defendant was the first person with whom she had engaged in sexual relations, that such relations took place during the likely period of conception and that she had not had sexual relations with anyone else during that time. This evidence, added to Urso's testimony of the defendant's alleged admission of paternity, was sufficient to establish a prima facie case.” Palomba v. Gray, 208 Conn. 21, 32, 543 A.2d 1331 (1988).
- STATUTES:**
- CONN. GEN. STAT. (2005)
    - § 45a-606. Father and mother joint guardians.
    - § 46b-61. Orders re children where parents live separately
    - § 46b-160. Petition by mother or expectant mother
    - § 46b-166. Testimony of putative father
    - § 46b-167. Evidence of putative father's good character admissible
    - § 46b-168. Genetic testing when paternity is in dispute. Assessment of costs
    - § 46b-172a. Claim for paternity by putative father
- REGULATIONS:**
- CONN. AGENCIES REGS. § 46b-168a-1. Genetic tests required by IV-D agencies (October 2000).
- CASES:**
- Waskewicz v. Black, no. FA97-0057416, 2000 Ct. Sup. 3, 5 (Judicial District, Ansonia-Milford, (Jan. 3, 2000). 2000 WL 38772. “Defendant claims that by the evidence he presented, he has raised a ‘doubt’ as to his presence in Morris, Connecticut on July 10, 1995. Plaintiff must only prove her case by a fair preponderance of the evidence in a paternity proceeding. Palomba v. Grey, 208 Conn. 21, 25 (1988). ‘Fair preponderance of the evidence’ is defined as ‘the better evidence, the evidence having the greater weight, the more convincing force in your mind.’ Cross v. Huttenlocher, 185 Conn. 390, 394 (1981). I find the testimony of the plaintiff with regard to the facts in dispute to be credible and that she was with the defendant on July 10, 1995 and had sexual relations with him that evening at his house in Morris, Connecticut.”
  - Palomba v. Gray, 208 Conn. 21, 26, 543 A.2d 1331 (1988). “Evidence that the plaintiff has been constant in accusing the defendant of being the father of the child is admissible at trial to corroborate her testimony and to establish a prima facie case. General Statutes 46b-160; Lavertue v. Niman, supra[196 Conn. 403, 407, 493 A.2d 123 (1985)]; Armstrong v. Watrous, 138 Conn. 127, 129, 82 A.2d 800 (1951). Once the plaintiff has established a prima facie case, the burden shifts to the defendant to prove his innocence by evidence other than his own. Mosher v. Bennett, 108 Conn. 671, 674, 144

A.2d 297 (1929); Holmes v. McLean, 5 Conn. Cir. Ct. 476, 479, 256 A.2d 849 (1969).”

- Thomas v. Rose, 10 Conn. App. 71, 74, 521 A.2d 597 (1987). “No medical testimony was offered to show that her heroin addiction impaired her ability to recall events and nothing in the exhibits would lead to that conclusion.”
- DiMauro v. Natalino, 11 Conn. App. 548, 550-551, 528 A.2d 851 (1987). “During cross-examination, the plaintiff was asked an isolated question regarding whether she had had sexual relations with anyone other than the defendant during the time that the child was conceived. She responded, ‘Yes, I did.’ When viewed in isolation, this testimony appears damaging to the plaintiff’s case. This question was asked, however, in the midst of cross-examination regarding the surname of the woman with whom the plaintiff was sharing an apartment at the time of conception. It would not have been unreasonable for the jury to conclude, therefore, that the plaintiff was confused when she answered this particular question. Moreover, at four separate times during the trial, the plaintiff denied having had sexual relations with anyone other than the defendant at the time of conception. Thus, the jury was presented with one inconsistency within the plaintiff’s testimony, and it was incumbent upon them to weigh her testimony as a whole.”
- Melanson v. Rogers, 38 Conn. Sup. 484, 486, 451 A.2d 825 (1982). “While it is true that the child whose paternity is in dispute may be exhibited to show a resemblance between that child and the alleged father; Shailer v. Bullock, 78 Conn. 65, 66, 61 A. 65 (1905); Holmes v. McLean, 5 Conn. Cir. Ct. 476, 481, 256 A.2d 849 (1969); there is no requirement that the child be brought in to show the lack of any such resemblance.”
- Holmes v. McLean, 5 Conn.Cir.Ct. 476, 482, 256 A.2d 849, (1969). “Evidence, however, is permissible if it shows relations with other men about the time of commencement of the period of gestation.”

**WEST KEY  
NUMBERS:**

- *Children out-of-wedlock*
  - # 42. Evidence
  - # 42.1. — In general
  - # 43. — Presumptions and burden of proof
  - # 44. — Admissibility in general
  - # 45. — Blood tests
  - # 46. — Testimony and declarations of prosecutrix
  - # 47. — Character and conduct of prosecutrix
  - # 48. — Admissions and declarations of defendant
  - # 49. — Character and conduct of defendant
  - # 51. — Resemblance of child to defendant
  - # 52. — Degree of proof
  - # 53. — Sufficiency

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
  - §§ 66-81. Evidence
  - § 66. Generally
  - § 67. Burden of proof
  - § 68. —Where child born in wedlock
  - § 69. Degree of proof

- § 70. Testimony of the mother; necessity of corroboration
- § 71. Defendant as witness, generally
- § 72. Acts, declarations, and admissions of defendant
- § 73. Declaration of other persons
- § 74. Intimacy and relations of parties
- § 75. Reputation and character of mother, generally
- § 76. Relations of mother with other men
- § 77. Reputation and character of defendant
- § 78. Blood tests
- § 79. Resemblance of child to defendant
- § 80. Exhibition of child to jury
- § 81. Financial status of defendant
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
  - §§ 99-109. Evidence
- Alan R. Gilbert, Annotation, Admissibility, *In Disputed Paternity Proceedings, Of Evidence To Rebut Mother's Claim of Prior Chastity*, 59 ALR3d 659 (1974).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).
  - Plaintiff's case for paternity
    - § 4. Generally
    - § 5. Mother's sexual intercourse with defendant
    - § 6. —Intercourse during period of child's conception
    - § 7. Absence of intercourse with other men
    - § 8. Child's biological affinity to defendant
  - Defendant's case against paternity
    - § 9. Generally
    - § 10. Absence of sexual intercourse
    - § 11. Unlikelihood or impossibility of paternity
    - § 12. Mother's relations with other men
    - § 13. Presumption that another man is father
    - § 14. Untimeliness of action
    - § 15. Prior proceeding as bar
    - § 16. —Prior settlement
  - Proof
    - § 23. Generally
    - § 24. Genetic and blood grouping tests
    - § 27. Expert opinion
    - § 28. Burden and standard of proof
    - § 29. —Presumptions based on paternity test results
- *Proof Of Husband's Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 14 POF2d 409 (1977).

**TEXTS &  
TREATISES:**

- 1 NINA M. VITEK, *DISPUTED PATERNITY PROCEEDINGS* (2005).
  - Chapter 1. Overview of disputed paternity actions.
    - § 1.06. Evidence to establish or disestablish paternity
      - [1] Blood tests
      - [2] Testimony of non-access
      - [3] Impotence or sterility or other biological impossibility
      - [4] Effect of void or voidable marriage
      - [5] Acknowledgement of parental status through other legal proceedings or course of conduct
      - [6] Family resemblance
      - [7] Witness

Chapter 2. Paternity proceedings

§ 2.02. Civil nature of paternity proceedings

[1]. The standard of proof

Chapter 3. Evidentiary and related issues in paternity

§ 3.02. Mother's testimony

§ 3.03. Father's testimony

§ 3.04. Physical resemblance between child and the defendant

§ 3.05. Period of conception

Chapter 4. Conducting the paternity trial

§ 4.11. Documents and records to be subpoenaed

§ 4.13. Quantum of proof

§ 4.14. Admissibility of blood tests

§ 4.15. Exhibits

§ 4.16. Examination of witnesses

- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).

Chapter 63. Paternity proceedings

§ 63.05. Settlement opportunities and trial

[4]. Burden of proof

[5]. Competency of witnesses

[6]. Evidence of the mother's sexual conduct

[7]. Quantum of proof to establish paternity

[8]. Demonstrative and physical evidence

[9]. Admissions, character, and conduct of defendant

**COMPILER:**

Compiled by Lawrence Cheeseman, Connecticut Judicial Branch Law Library,  
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# Section 2.6j

## Defenses

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### *A Guide to Resources in the Law Library*

#### **SCOPE:**

Bibliographic resources relating to evidence in an action to establish paternity.

#### **SEE ALSO:**

- [§ 26.6h Blood tests](#)
- [§ 26.6i Evidence](#)

#### **DEFINITIONS:**

- **Collateral estoppel:** “‘or issue preclusion, prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action.’ Aetna Casualty & Surety Co. v. Jones, 220 Conn. 285, 296, 596 A.2d 414 (1991). The issue must have been fully and fairly litigated in the first action, and it must have been actually decided and necessary to the judgment.” Gladysz v. Planning & Zoning Commission, 57 Conn. App. 797, 801, 750 A.2d 507 (2000).
- **Res judicata:** “Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits. . . . [I]ssue preclusion, prevents a party from relitigating an issue that has been determined in a prior suit. Virgo v. Lyons, 209 Conn. 497, 501, 551 A.2d 1243 (1988), quoting Gionfriddo v. Gartenhaus Cafe, 15 Conn. App. 392, 401-402, 546 A.2d 284 (1988), *aff’d*, 211 Conn. 67, 557 A.2d 540 (1989).” (Internal quotation marks omitted.)” Nancy G. v. Dept. of Children and Families, 248 Conn. 672, 681, 733 A.2d 136 (1999).
- **Laches:** “‘The burden is on the party alleging laches to establish that defense . . . . ‘Laches consists of two elements. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. Kurzatkowski v. Kurzatkowski, 142 Conn. 680, 685, 116 A.2d 906 (1955). . . . The mere lapse of time does not constitute laches . . . unless it results in prejudice to the defendant . . . as where, for example, the defendant is led to change his position with respect to the matter in question. . . . Bozzi v. Bozzi, [177 Conn. 232, 239, 413 A.2d 834 (1979)].” (Citations omitted; internal quotation marks omitted.) Burrier v. Burrier, 59 Conn. App. 593, 596, 758 A.2d 373 (2000).

#### **STATUTES:**

- CONN. GEN. STATS. (2005).  
Chapter 815y. Paternity matters  
§ 46b-160. Petition by mother or expectant mother.  
§ 46b-172a. *Claim for paternity by putative father. Hearing. Three-judge court. Rights and responsibilities upon adjudication or acknowledgement of paternity. Claim for paternity after death of putative father*

#### **CASES:**

- Jack M. v. Kim D., 1 Conn. L. Rptr. 333, 334-335 (Judicial District, New Haven at Meriden 1990) 1990 WL 265960. “The court finds it is a fact that the petitioner knew from the date of birth that Kim and her husband believed

that the husband was the father of the child and were representing at all times that he was the father of the child. The court finds that the child was never represented to be the child of the petitioner. The child believes the husband is her father and enjoys a traditional family life in a comfortable home owned by Kim and her husband. He has legitimized the child by marrying Kim D. and acknowledging paternity in the probate court . . . For the foregoing reasons, the court concludes that the petitioner is equitably estopped from pursuing this action and will not advance the petition by granting the petitioner's motions for testing."

- Freda v. Freda, 39 Conn. Supp. 230, 232, 476 A.2d 153 (1984). "The finding of paternity in this case [marital presumption] was the same as if the court had given its approval to an agreement submitted to the court. The litigation required for the application of collateral estoppel was not present and the court may open its judgment if it is shown that fraud in obtaining it was present."

#### **DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

#### **ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
  - § 59. Defenses, generally
  - § 60. —Res judicata
  - § 61. —Death of mother or child
  - § 62. —Death of child; stillborn child
  - § 63. —Death of father
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
  - §§ 77-80. Defenses and abatement of proceedings
    - § 77. Defenses in general
    - § 78. Release or settlement
    - § 79. Abatement of proceedings in general
    - § 80. Death
- James O. Pearson, Annotation, *Proof Of Husband's Impotency Or Sterility As Rebutting Presumption Of Legitimacy*, 84 ALR3d 495 (1978).
- Robert A. Brazener, *Statute Of Limitations In Illegitimacy Or Bastardy Proceedings*, 59 ALR3d 685 (1974).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).
  - Defendant's case against paternity
    - § 9. Generally
    - § 10. Absence of sexual intercourse
    - § 11. Unlikelihood or impossibility of paternity
    - § 12. Mother's relations with other men
    - § 13. Presumption that another man is father
    - § 14. Untimeliness of action
    - § 15. Prior proceeding as bar
    - § 16. —Prior settlement

#### **PAMPHLETS:**

- Establishing Paternity: Questions and Answers for Dads  
<http://www.dss.state.ct.us/pubs/patdad.pdf>
- Establishing Paternity: Questions and Answers for Moms  
<http://www.dss.state.ct.us/pubs/patmom.pdf>

#### **TEXTS &**

- 1 NINA M. VITEK, *DISPUTED PATERNITY PROCEEDINGS* (2005).

**TREATISES:**

Chapter 4. Conducting the paternity trial

§ 4.12. Defenses to paternity

[1]. Presumption of legitimacy

[1A]. Presumption of paternity

[2]. Collateral estoppel

[3]. Res judicata

[4]. Laches

[5]. Statute of limitations

[6]. Question of law as a defense

[7]. Double jeopardy not a defense in paternity proceedings

[8]. Age of respondent not a defense

[9]. Full faith and credit

- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2005).

Chapter 63. Paternity proceedings

§ 63.02. Preliminary considerations

[3]. Statute of limitations

[5]. Presumption of legitimacy

§ 63.05. Settlement opportunities and trial

[10]. Laches, Res Judicata, and Estoppel

§ 63.07. Enforcement proceedings and modification

§ 63.08. Appellate review

**COMPILER:**

Compiled by Lawrence Cheeseman, Connecticut Judicial Branch Law Library,  
One Court Street, Middletown, CT 06457, (860) 343-6560.

# Postjudgment Proceedings

*A Guide to Resources in the Law Library*

## **SCOPE:**

- Bibliographic resources relating to postjudgment proceedings following judgment or order of paternity

## **STATUTES:**

- CONN. GEN. STATS. (2005).  
Chapter 815y. Paternity matters  
§ 46b-160. Petition by mother or expectant mother.  
§ 46b-172a. Claim for paternity by putative father. Hearing. Three-judge court. Rights and responsibilities upon adjudication or acknowledgement of paternity. Claim for paternity after death of putative father

## **CASES:**

- Greene v. Bynum, 46 Conn. App. 1, 5, 698 A.2d 334 (1997). “By filing an insufficient petition for appeal, the defendant failed to comply with the requirements of the statute and, thus, lacked standing to appeal. See Beckish v. Manafort, 175 Conn. 415, 419, 399 A.2d 1274 (1978). The trial court, consequently, lacked jurisdiction to hear the appeal from the decision of the family court magistrate. Although the question of the trial court's jurisdiction was not raised at the hearing because the state did not appear at that hearing, subject matter jurisdiction may be raised at any time and, when it is raised, it must be decided.”
- Erisoty's Appeal from Probate, 216 Conn. 514, 522, 582 A.2d 760 (1990). “We conclude, therefore, that because the plaintiff's constitutionally protected interests in human dignity and privacy were adversely affected by the Probate Court order to submit to a blood grouping test, the plaintiff was aggrieved and could properly appeal the order pursuant to [Conn. Gen. Stats. § ] 45-288.”
- Miller v. Kirshner, 225 Conn. 185, 199, 621 A.2d 1326 (1993). “The trial court heard the testimony of all of the witnesses and rendered its judgment accordingly. We will not usurp the fact-finding function of the trial court and retry the case on appeal as the defendant would have us do.”
- Fortier v. Laviero, 10 Conn. App. 181, 182, 522 A.2d 313 (1987). “Even if we assume arguendo, that the court erred in allowing into evidence the defendant's blood type, the defendant has failed to show that, given the other evidence relied on by the court, the admission was harmful. The court made only limited use of the evidence of the defendant's blood type, and explicitly found that ‘the most convincing evidence of paternity’ was the testimony of the parties themselves. In order to establish reversible error, the defendant has the burden of showing that an error is both erroneous and harmful.”
- Fedele v. Romero, 37 Conn. Sup. 885, 886, 441 A.2d 867 (1982). “The validity of a claim that a decision is unsupported by the evidence may be



tested only by reference to the record together with exhibits and transcripts filed in the matter.”

**WEST KEY NUMBERS:**

- *Children out-of-wedlock*
  - # 69. Enforcement of order for support
  - # 71. Sentence on criminal conviction
  - # 72. Review of proceedings
  - # 72.1. — In general
  - # 73. — Appeal
  - # 74. — Certiorari

**DIGESTS:**

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

**ENCYCLOPEDIAS:**

- 41 AM JUR 2D *Illegitimate Children* (2005).
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
- Donald M. Zupanec, Annotation, *Effect, In Subsequent Proceedings, Of Paternity Findings Or Implications In Divorce Or Annulment Decree Or In Support Or Custody Order Made Incidental Thereto*, 78 ALR3d 846 (1977).

**TEXTS & TREATISES:**

- 1 NINA M. VITEK, *DISPUTED PATERNITY PROCEEDINGS* (2005).
  - Chapter 2. Paternity proceedings
  - § 2.07. Postjudgment proceedings
    - [1]. Enforcing paternity judgment or order
    - [2]. Relief from paternity judgment or order
      - [a]. In general
      - [b]. Newly discovered evidence
      - [c]. Mistake or excusable error
      - [d]. Prospective relief
      - [e]. Relief on other grounds
      - [f]. Relief based on DNA evidence
- 6 ARNOLD H. RUTKIN, *FAMILY LAW AND PRACTICE* (2005).
  - Chapter 63. Paternity proceedings
  - § 63.07. Enforcement proceedings and modification
  - § 63.08. Appellate review

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# Children's Surnames

## *A Guide to Resources in the Law Library*

### **SCOPE:**

- Bibliographic sources relating to change of name of a minor

### **DEFINITIONS:**

- “When the question presented is whether the name of a minor child should be changed, the court, in line with its universal duty to protect the interests of minors, must take into consideration whether the change of name will promote the child's best welfare. In the present case, on the facts found, there was no indication that to change the plaintiff's name would cause any legal injury to anyone. The most that could be said against it was that it might hurt the defendant's sensibilities. It did not, of course, make any change in the relationship of parent and child which existed between them.” Don v. Don, 142 Conn. 309, 312, 114 A.2d 203 (1955).
- **Best Interest of the Child:** “In determining whether the application for change of name should be granted, the court is bound to consider the best interests of the minor child.” Peterson v. Peterson, No. CV-99 0337876S (Conn. Super. Ct., Danbury, May 22, 2000), 2000 WL 739636.

### **STATUTES:**

- CONN. GEN. STAT. (2005)
  - § 7-50 Restrictions on content of birth certificates. Exceptions. Filing of acknowledgments or adjudications of paternity. Removal or changing of paternity information. Access to copies restricted.
  - § 45a-99. Jurisdiction to grant change of name
  - § 45a-736. Change of name of adopted person
- 5a-737. [adopted person] Obliteration of original name on institutional records, new name substituted
  - § 46b-1(6). Complaint for change of name
  - § 52-11. Complaint for change of name. Notice to Commissioner of Public Safety

### **LEGISLATIVE:**

- 2003 CONN. ACTS 202 § 17-18

### **COURT RULES:**

- CONNECTICUT PRACTICE BOOK (2005 ed.)
  - § 9-24 Change of name by minor children. “In all proceedings for change of name under General Statutes § 52-11, brought by a minor child through his or her next friend, the parents of such child, not named as next friends, shall be necessary parties and shall be cited in, in such manner as shall be ordered by the court or a judge thereof.”

### **FORMS:**

- Probate Court
  - Form PC-900. Application for Change of Name (Minor).  
<http://www.jud2.state.ct.us/webforms/forms/pc-900.pdf>
- 2 CONNECTICUT PRACTICE BOOK Form 504.3. Application for change of name
- 18A AM JUR PLEADING & PRACTICE FORMS, Name Forms 31-44

## Changing minor's name

### CASES:

- St. Amour v. Carvalho, No. FA04 4000030 (Conn. Super. Ct., Aug. 11, 2005), 39 Conn. L. Rptr. 677. "There is no statutory provision or case law which prescribes the establishment of a child's surname. The case of *Shockley v. Okeke*, 48 Conn.Sup. 647, 856 A.2d 1054 (2004) (37 Conn. L. Rptr. 593), is most instructive on the lack of a naming procedure."
- Mejias v. Sebastian, No. FA98-0116648 (Dec. 1, 2004) "The child's name is not required to be placed on the birth certificate. General Statutes § 7-50. The state regulations concerning birth certificates are silent on confirming the child's name. Even when the mother and father are the statutory birth reporters, certain detailed information must be provided, but the child's name is not required. Regs., Conn. State Agencies § 19a-14-1."
- Shockley v. Okeke, 48 Conn. Sup. 647, 664 (2004). "The court finds that the legal name of the minor child is as acknowledged by both the parents of the child in the acknowledgment of paternity that is on file both in the present case and in the companion custody and visitation case."
- Peterson v. Peterson, No. CV-99 0337876S (Conn. Super. Ct., Danbury, May 22, 2000), 2000 WL 739636. "In applying the fair preponderance of the evidence test, this court finds that the change of name for the minor child from the last name of Peterson to the last name of Silva, is in the best interest of the minor child. This court further finds that the new name of the minor child will not result in injury to some other person with respect to such person's legal rights. This court therefore orders that the respondent immediately take steps to obtain a new (not corrected) birth certificate . . . ."
- In Re Michaela Lee R., 253 Conn. 570, 592, 756 A.2d 214 (2000). "Probate courts are not required to remove parental information from birth certificates under any provision of the General Statute."
- Delaney v. Appeal from Probate, 9 Conn. L. Rep. 571 (Conn. Super. Ct. 1993). "This court determines that it is in the best interest of the child that the child have the last name Brown . . . . The court further determines that for sound reason the name Delaney should also be included in the child's name. In this fashion the bond between father and son can be preserved and enhanced, and the relationship between the changed name and the birth name will appear of record to obviate any confusion when the child, in later life, is required to produce documentation of name at birth."
- Don v. Don, 142 Conn. 309, 312, 114 A2d 203 (1955). "When the question presented is whether the name of a minor child should be changed, the court, in line with its universal duty to protect the interests of minors, must take into consideration whether the change of name will promote the child's best welfare. In the present case, on the facts found, there was no indication that to change the plaintiff's name would cause any legal injury to anyone. The most that could be said against it was that it might hurt the defendant's sensibilities. It did not, of course, make any change in the relationship of parent and child which existed between them."
- Mayor v. Mayor, 17 Conn. App. 627, 629, 554 A.2d 1109 (1989). "The question for our consideration is whether, in the context of an action for dissolution of marriage, the trial court had jurisdiction to change the name of the parties' minor child upon the request of one of the parties."  
"On the basis of the express terms of §§ 52-11 and 46b-1(6), we conclude that the trial court was without jurisdiction to change the name of a nonparty minor child incident to the dissolution of the parents' marriage." *Ibid.*, 632.
- Cynthia S. v. Rosario G., 5 CONN. L. RPTR. 234 (1991). "Defendant's request to change the child's last name to his is not acted upon, the court determined it is without jurisdiction to entertain this request in this

proceeding. Such a request must be brought in a separate proceeding to which the child is a party by a person authorized to do so.”

**DIGESTS:**

- CONNECTICUT FAMILY LAW CITATIONS: *NAME CHANGE*

**ENCYCLOPEDIAS:**

- 57 AM JUR 2d (2001). *Name*
  - I. In general
    - §§ 12-15. Minor’s name
  - II. Change of name
    - §§ 43-59. Minor’s name
      - §§ 43-46. In general
      - §§ 47-55. Particular factors considered
      - § 56-59. Proceedings
- 65 C.J.S (2000). *Names*
  - IV. Change of name
    - § 23. Minor child
    - § 24. Minor child—Best interest of child
    - § 25. Minor child—Change sought by minor
- Jay M. Zitter, Annotation, *Rights And Remedies Of Parents Inter Se With Respect To The Names Of Their Children*, 40 ALR5th 697 (1996).
- Annotation, *Change Of Child’s Name In Adoption Proceeding*, 53 ALR2d 927 (1957).
- Annotation, *Validity And Enforceability Of Contract In Consideration Of Naming Child*, 21 ALR2d 1061(1952).

**LAW REVIEWS:**

- Richard J. Lussier, Case Note, *Delaney v. Appeal from Probate: When Is A Dual Surname In The Best Interest Of The Child?*, 9 CONNECTICUT PROBATE LAW JOURNAL 161-170 (Fall 1994).

**COMPILER:**

- Jeffrey Dowd and Lawrence Cheeseman, Connecticut Judicial Branch, Law Library At Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

**Table 10 Shockley v. Okeke**

<b>Shockley v. Okeke</b>	
Rule for change of name of a minor child	<p>“This court finds that there is a single rule for change of a minor child's name and that rule applies to all applications for change of a minor child's name regardless under which statute such a claim is brought. <i>Mayor v. Mayor</i>, 17 Conn. App. 627, 629, 633, 554 A.2d 1109 (1989).</p> <p>The following is the single rule for change of name of a minor child under any of the three aforementioned statutes [§§ 52-11, 46b-1(6) and 45a-99]. ‘Whether an application for a change of name should be granted is a matter which rests in the sound discretion of the court. . . . In exercising that discretion, the court should bear in mind that, generally speaking, independently of any court order, a person is free to adopt and use any name he sees fit. . . . Ordinarily, therefore, an application for a change of name should be granted unless it appears that the use of the new name by the applicant will result in injury to some other person with respect to his legal rights, as, for instance, by facilitating unfair competition or fraud. . . . When the question presented is whether the name of a minor child should be changed, the court, in line with its universal duty to protect the interests of minors, must take into consideration whether the change of name will promote the child's best welfare.’ (Citations omitted.) <i>Don v. Don</i>, supra, 142 Conn. 311-12.” <u><i>Shockley v. Okeke</i></u>, 48 Conn. Sup. 647, 653-654 (2004)</p>
Burden of Proof	<p>“The plaintiff, as the moving party, has the burden of proof . . . Courts have rejected the clear and convincing evidence test and applied the fair preponderance of the evidence test in making change of name decisions.” <u><i>Shockley v. Okeke</i></u>, 48 Conn. Sup. 647, 654 (2004)</p>
Finding	<p>“This court, applying the standards of <i>Don</i> to these claims, finds: (1) The interests of the defendant would be severely prejudiced by the change of name; (2) The plaintiff has failed to identify what the child's legal name is and, therefore, from what legal name the change is sought; (3) The plaintiff has permitted the following spellings of the child's name to occur in the Superior Court record: as to the first name - Nnamdi and Nnambi; as to the second name - Ikwnunne, Ikwanne, Ikwane and no middle name; as to the last name - Okeke and Shockley-Okeke; (4) The plaintiff has not produced any proof that the child's last name was ever Shockley-Okeke; and, (5) It is not in the best interests of the child to change his name. <u><i>Shockley v. Okeke</i></u>, 48 Conn. Sup. 647, 656 (2004).</p>

**Table 11 Restrictions on contents of birth certificate**

<p><b>Restrictions on content of birth certificates. Exceptions. Filing of acknowledgments or adjudications of paternity. Removal or changing of paternity information. Access to copies restricted.</b></p>
<p><b>Conn. Gen. Stats. § 7-50 (2005)</b></p>
<p>(a) No certificate of birth shall contain any specific statement that the child was born in or out of wedlock or reference to illegitimacy of the child or to the marital status of the mother, except that information on whether the child was born in or out of wedlock and the marital status of the mother shall be recorded on a confidential portion of the certificate pursuant to section 7-48. Upon the completion of an acknowledgment of paternity at a hospital, concurrent with the hospital's electronic transmission of birth data to the department, or at a town in the case of a home birth, concurrent with the registration of the birth data by the town, the acknowledgment shall be filed in the paternity registry maintained by the department, as required by section 19a-42a, and the name of the father of a child born out of wedlock shall be entered in or upon the birth certificate or birth record of such child. All properly completed post birth acknowledgments or certified adjudications of paternity received by the department shall be filed in the paternity registry maintained by the department, and the name of the father of the child born out of wedlock shall be entered in or upon the birth record or certificate of such child by the department, if there is no paternity already recorded on the birth certificate. If another father's information is recorded on the certificate, the original father's information shall not be removed except upon receipt by the department of a certified order by a court of competent jurisdiction in which there is a finding that the individual recorded on the birth certificate, specifically referenced by name, is not the child's father, or a finding that a different individual than the one recorded, specifically referenced by name, is the child's father. The name of the father on a birth certificate or birth record shall otherwise be removed or changed only upon the filing of a rescission in such registry, as provided in section 19a-42a. The Social Security number of the father of a child born out of wedlock may be entered in or upon the birth certificate or birth record of such child if such disclosure is done in accordance with 5 USC 552a note.</p>
<p>(b) The department shall restrict access to and issuance of certified copies of acknowledgements of paternity as provided in section 19a-42a.</p>

# GLOSSARY

## A

**Action to establish paternity:** "Historically, the action was criminal in form but civil in nature. It is fundamental, however, that the rules governing civil actions apply." Kuser v. Orkis, 169 Conn. 66, 71, 362 A.2d 943 (1975).

**Actual notice:** "If the putative father resides out of or is absent from the state, notice required for the exercise of jurisdiction over such putative father shall be actual notice, and shall be in the manner prescribed for personal service of process by the law of the place in which service is made." CONN. GEN. STAT. §46b-160(b) (2005).

**A.I.D.** (heterologous artificial insemination) is insemination of a married woman with semen of a donor other than her husband

**A.I.H.** (homologous artificial insemination) is insemination of a married woman with semen of her husband.

**Attorney General:** "In cases involving public assistance recipients the petition shall also be served upon the Attorney General who shall be and remain a party to any paternity proceeding and to any proceedings after judgment in such action." CONN. GEN. STAT. §46b-160(a) (2001).

## B

**Bastardy actions:** "The purpose of what were formerly called bastardy actions and are now called paternity proceedings is to relieve the public of the burden of supporting an illegitimate child and to provide the mother with assistance in carrying out her obligation of support." Kuser v. Orkis, 169 Conn. 66, 71, 362 A.2d 943 (1975).

**Burden of proof:** "A paternity action results in a finding of 'guilt' or 'innocence,' and nonpayment of support orders attendant to a finding of 'guilt' may lead to contempt and imprisonment. General Statutes §§ 46b-171, 46b-215, 53-304. Nonetheless, the plaintiff in a paternity proceeding need only prove her case by a fair preponderance of the evidence. Lavertue v. Niman, 196 Conn. 403, 407, 493 A.2d 213, (Conn. 1985).

## C

**Cease to be a party:** "Failing perfection of parental rights as prescribed by this section, any person claiming to be the father of a child born out of wedlock (1) who has not been adjudicated the father of such child by a court of competent jurisdiction, or (2) who has not acknowledged in writing that he is the father of such child, or (3) who has not contributed regularly to the support of such child or (4) whose name does not appear on the birth certificate shall cease to be a legal party in interest in any proceeding concerning the custody or welfare of the child, including but not limited to guardianship and adoption, unless he has shown a reasonable degree of interest, concern or responsibility for the child's welfare." CONN. GEN. STAT. § 46b-172a(h) (2001).

**Child of a Marriage:** "The issue of any void or voidable marriage shall be deemed legitimate. Any child born before, on or after October 1, 1976, whose birth occurred prior to the marriage of his parents shall be deemed a child of a marriage." CONN. GEN. STAT. § 46b-60 (2001)

**Child Out of Wedlock:** "Unlike a valid marriage which creates a legal status between the parties and has been said to be the marital res capable of furnishing the basis for jurisdiction of a court, the birth of a child out of wedlock does not, per se, create any legal status between the child and a putative father. Generally, the legitimatization of such a child vis-a-vis his 'father' is a matter of statute." Hayes v. Smith, 194 Conn. 52, 64, 480 A.2d 425 (1984).

**Collateral estoppel** (as defense to paternity): "or issue preclusion, prohibits the relitigation of an issue

when that issue was actually litigated and necessarily determined in a prior action.’ Aetna Casualty & Surety Co. v. Jones, 220 Conn. 285, 296, 596 A.2d 414 (1991). The issue must have been fully and fairly litigated in the first action, and it must have been actually decided and necessary to the judgment.” Gladysz v. Planning & Zoning Commission, 57 Conn. App. 797, 801, 750 A.2d 507 (2000).

**Compelling disclosure:** “If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a decree of divorce or dissolution or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the Commissioner of Social Services, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the Superior Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.” CONN. GEN. STAT. §46b-169(a) (2001).

## D

**Default Judgement:** “The court or family support magistrate shall enter a default judgment against a nonresident putative father if such putative father (1) fails to answer or otherwise respond to the petition, or (2) fails to appear for a scheduled genetic test without good cause, provided a default judgment shall not be entered against a nonresident putative father unless (A) there is evidence that the nonresident putative father has received actual notice of the petition pursuant to subsection (c) of this section and (B) there is verification that the process served upon the putative father included the answer form, notice to the defendant and an application for appointment of counsel required by subsection (e) of this section. Upon entry of a default judgment, a copy of the judgment and a form for a motion to reopen shall be served upon the father in the same manner as provided in subsection (c) of this section.” CONN. GEN. STAT. §46b-160(g) (2001).

## E

**Equal Protection of the Law** (illegitimate children): “The United States Supreme Court, moreover, has held that illegitimate children cannot be denied equal protection of the law.” Trimble v. Gordon, 430 U.S. 762, 776, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1977).

## F

**Father:** “Any person claiming to be the father of a child born out of wedlock may at any time but no later than sixty days after the date of notice under section 45a-716 [hearing on petition to terminate parental rights], file a claim for paternity with the court of probate for the district in which either the mother or the child resides, on forms provided by such court.” CONN. GEN. STAT. § 46b-172a(a) (2001)

## H

**HLA blood test:** “One type of blood test, the human leukocyte antigen (HLA) tissue typing test, can determine paternity with a rate of 98 percent probability. Fingerprinting with deoxyribonucleic acid, or DNA, can positively identify a person's father . . . . Several Connecticut paternity cases have focused on the accuracy of these tests. See generally State v. Skipper, 228 Conn. 610, 637 A.2d 1101 (1994) (HLA and DNA tests); Miller v. Kirshner, 225 Conn. 185, 621 A.2d 1326 (1993) (HLA tests); Moore



v. McNamara, 201 Conn. 16, 513 A.2d 660 (1986) (HLA tests). General Statutes § 46b-1 68 (a) allows a court or family support magistrate to order DNA tests when the paternity of a child is in issue." Weidenbacher v. Duclos, 234 Conn. 51, 71, 661 A.2d 988 (1995) fn. 25.

## I

**In vitro** (latin for "in glass") is the process by which an ovum(egg) is removed from a woman's ovary and fertilized in a laboratory vessel with sperm of husband or donor.

## J

**Joint Guardians:** "The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor." CONN. GEN. STAT. §45a-606 (2001)

## L

**Laches** (as defense to paternity): "The burden is on the party alleging laches to establish that defense . . . 'Laches consists of two elements. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. Kurzatkowski v. Kurzatkowski, 142 Conn. 680, 685, 116 A.2d 906 (1955). . . . The mere lapse of time does not constitute laches . . . unless it results in prejudice to the defendant . . . as where, for example, the defendant is led to change his position with respect to the matter in question. . . . Bozzi v. Bozzi, [177 Conn. 232, 239, 413 A.2d 834 (1979)]." (Citations omitted; internal quotation marks omitted.) Burrier v. Burrier, 59 Conn. App. 593, 596, 758 A.2d 373 (2000).

## M

**Marital presumption:** "postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband." Weidenbacher v. Duclos, 234 Conn. 51, 68-69, 661 A.2d 988 (1995). **Rebuttable presumption:** "We have never held, however, that this presumption is irrebuttable and conclusive against a person claiming to be the biological father of the child. On the contrary, we have held that this presumption may be rebutted a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father." *Ibid.*, p. 69.

**Mother or Expectant Mother:** "The verified petition, summons and order shall be filed in the superior court for the judicial district in which either she or the putative father resides, except that in IV-D support cases, as defined in subdivision (13) of subsection (b) of section 46b-23 1 and in petitions brought under sections 46b-212 to 46b-213v, inclusive, such petition shall be filed with the clerk for the Family Support Magistrate Division serving the judicial district where either she or the putative father resides." CONN. GEN. STAT. § 46b-160(a) (2001).

## N

**Notice to the putative father:** "shall inform him that (A) he has a right to be represented by an attorney, and if he is indigent, the court will appoint an attorney for him, (B) if he is found to be the father, he will be required to financially support the child until the child attains the age of eighteen years, (C) if he does not admit he is the father, the court or family support magistrate may order a genetic test to determine paternity and that the cost of such test shall be paid by the state in IV-D support cases, and

in non-IV-D cases shall be paid by the petitioner, except that if he is subsequently adjudicated to be the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of such cost and (D) if he fails to return the answer form or fails to appear for a scheduled genetic test without good cause, a default judgment shall be entered.” CONN. GEN. STAT. §46b-160(c)(2) (2001).

## O

**Order to submit to blood test:** “If the court or family support magistrate may exercise personal jurisdiction over the nonresident putative father pursuant to subsection (d) of this section and the answer form is returned and the putative father does not admit paternity, the court shall order the mother, the child and the putative father to submit to genetic tests. Such order shall be served upon the putative father in the same manner as provided in subsection (c) of this section. The genetic test of the putative father, unless he requests otherwise, shall be made in the state where the putative father resides at a location convenient to him. The costs of such test shall be paid by the state in IV-D support cases, and in non-IV-D cases shall be paid by the petitioner, except that if the putative father is subsequently adjudicated the father of the child, he shall be liable to the state or the petitioner, as the case may be, for the amount of the costs.” CONN. GEN. STAT. § 46b-160(f) (2001).

## P

**Parental Rights of Father:** "Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, **his rights and responsibilities shall be equivalent to those of the mother**, including those rights defined under section 45a-606." CONN. GEN. STAT. §46b-172a(g) (2001) (emphasis added).

**Prima facie case:** “The plaintiff did not waver in her assertions that the defendant was the first person with whom she had engaged in sexual relations, that such relations took place during the likely period of conception and that she had not had sexual relations with anyone else during that time. This evidence, added to Urso's testimony of the defendant's alleged admission of paternity, was sufficient to establish a prima facie case.” Palomba v. Gray, 208 Conn. 21, 32, 543 A.2d 1331 (1988).

## Q

**Quasi-Criminal Actions:** “Although paternity actions may have ‘quasi-criminal’ overtones; Little v. Streater, 452 U.S. 1, 10, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981); they are civil actions to which the general rules governing civil actions apply.” Green v. Green, 39 Conn. Supp. 325, 326, 464 A.2d 72 (1983).

## R

**Res judicata** (as defense to paternity): "Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits. . . . [I]ssue preclusion, prevents a party from relitigating an issue that has been determined in a prior suit. Virgo v. Lyons, 209 Conn. 497, 501, 551 A.2d 1243 (1988), quoting Gionfriddo v. Gartenhaus Cafe, 15 Conn. App. 392, 401-402, 546 A.2d 284 (1988), aff'd, 211 Conn. 67, 557 A.2d 540 (1989)." (Internal quotation marks omitted.)” Nancy G. v. Dept. of Children and Families, 248 Conn. 672, 681, 733 A.2d 136 (1999).

## S

**Surname (Child):** “When the question presented is whether the name of a minor child should be changed, the court, in line with its universal duty to protect the interests of minors, must take into consideration whether the change of name will promote the child's best welfare. In the present case, on the facts found, there was no indication that to change the plaintiff's name would cause any legal injury to anyone. The most that could be said against it was that it might hurt the defendant's sensibilities. It did not, of course, make any change in the relationship of parent and child which existed between them.” Don v. Don, 142 Conn. 309, 312, 114 A.2d 203 (1955).

**Surrogate motherhood:** “For a fee of \$10,000, a woman agrees to be artificially inseminated with the semen of another woman's husband; she is to conceive the a child, carry it to term, and after its birth surrender it to the natural father and his wife. The intent of the contract is that the child's natural mother will thereafter be forever separated from her child. The wife is to adopt the child, and she and the natural father are to be regarded as its parents for all purposes.” Matter of Baby M., 537 A.2d 1227, 1234 (N.J., 1988).

**Summons:** “The court or any judge, or family support magistrate, assigned to said court shall cause a summons, signed by such judge or magistrate, by the clerk of said court, or by a commissioner of the Superior Court to be issued, requiring the putative father to appear in court at a time and place as determined by the clerk but not more than ninety days after the issuance of the summons to show cause why the request for relief in such petition should not be granted.” CONN. GEN. STAT. §46b-160(a) (2001).

## T

**Three Judge Court (Probate):** “ Upon the motion of the putative father, the mother, or his or her counsel, or the judge of probate having jurisdiction over such application, filed not later than three days prior to any hearing scheduled on such claim, the Probate Court Administrator shall appoint a three-judge court from among the several judges of probate to hear such claim. Such three-judge court shall consist of at least one judge who is an attorney-at-law admitted to practice in this state. The judge of the court of probate having jurisdiction over such application under the provisions of this section shall be a member, provided such judge may disqualify himself in which case all three members of such court shall be appointed by the Probate Court Administrator. Such three-judge court when convened shall have all the powers and duties set forth under sections 17a-75 to 17a-83, inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 1 7a-576, inclusive, and 1 7a-61 5 to 1 7a-61 8, inclusive, and shall be subject to all of the provisions of law as if it were a single-judge court. The judges of such court shall designate a chief judge from among their members. All records for any case before the three-judge court shall be maintained in the court of probate having jurisdiction over the matter as if the three-judge court had not been appointed.” CONN. GEN. STAT. § 46b-172(e) (2001).

## W

**Wrongful birth and wrongful life:** "are but shorthand phrases that describe the causes of action of parents and children when negligent medical treatment deprives parents of the option to terminate a pregnancy to avoid the birth of a defective child.” Procanik by Procanik v. Cillo, 478 A2d 755, 760 (N.J. 1984).

**Wrongful life:** refers to a cause of action brought by or on behalf of a defective child who claims that but for the defendant doctor's negligent advice to or treatment of its parents, the child would not have been born. “ Ibid.